

POWER POLITICS

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*An Introduction to the Study of International Relations
and Post-War Planning*

by

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To
GEORGE W. KEETON
in friendship

PREFACE

EVEN in the midst of a totalitarian and world war, it might appear an exaggeration to conceive international relations in terms of power politics. Yet, though no Statesmen more ruthlessly apply these principles to inter-State affairs than the dictators, the other members of the international society have to model their behaviour on the same patterns, if only because they cannot avoid contact with the wholesale addicts to the rule of force. There are certainly differences in degree between the policies which States are free to adopt within such a system, but it can serve no good purpose to disguise or minimize the strength of the ultimate driving forces behind the present international society. As Hitler clearly realizes, 'my great political opportunity lies in my deliberate use of power at a time when there are still illusions abroad as to the forces that mould history'.¹ What he and his fellow dictators have done is to accentuate the struggle and to bring it to a head by throwing overboard even that minimum of decency, Christian traditions and legal conventions that checked in the past the unlimited play of ruse and force between the Leviathans.

Hitler's mistake does not so much lie in his reading of the past and present, but in his perverse assumption that international relations *must* be subject to the rule of force and *cannot* be organized in a community spirit and founded on the rule of law.

Nothing could, however, be more dangerous to the achievement of this object, the main constructive task which lies ahead, than the belief that half-way houses like the League of Nations or limited plans for economic co-operation are adequate to bring about this vital transformation. For this reason the lessons to be derived from the failure of the League experiment have to be learnt in full if similar mistakes and subterfuges are not to be repeated in experiments for post-war reconstruction. As the same illusions – and a good many new ones – have also found their way into the host of peace plans which have been showered on a bewildered and gradually wearying

¹ H. Rauschning, *Hitler Speaks*, London, 1939, p. 271.

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public, it seems advisable not to contribute rather to the inflation of the currency of international order, but to limit our effort to the analysis of these all too many blue-prints, and to delineate the possible patterns and principles on which a new post-war order may be founded and from which the peace-makers may take their choice.

This book owes more than can be adequately mentioned here to the manifold contacts and experiences, opportunity for which was afforded by the author's association with the New Commonwealth Institute of World Affairs as its Secretary from its foundation in 1942 until last summer, and to the stimulation received from students, both at the College and in the Adult Education Movement. But it may be permitted to single out Professor George W. Keeton, the Acting Dean of the Faculty of Laws, University College, London, and Director of the New Commonwealth Institute of World Affairs, with whom common work in the Institute and College have created specially close ties of friendship, and to whom this book is dedicated.

Finally, I have to express my thanks for their willingly granted permission to use material published by them in books and articles to the Editor of the *American Journal of International Law*, the Council of the New Commonwealth Institute of World Affairs, and to the publishers of the Peace Book Company, London.

G. S.

UNIVERSITY COLLEGE, LONDON,
in Cambridge.
January 14th, 1947.

INTRODUCTION

PROBLEMS AND METHODS OF THE STUDY OF
INTERNATIONAL RELATIONS

INTRODUCTION

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WAR and revolution have one feature in common: revolutionary movements and the belligerent countries may be conscious of the deficiencies of the social and political *status quo* and of their own programmes. But what peace or the end of the revolutionary upheaval brings lies in the lap of the gods. Both war and revolution are a leap into the dark, and a Napoleon looking back from St. Helena at his ambitious plans for a European order could have taught the world a lesson in humility which would probably only have found its parallel if Lenin could have imagined Stalin's U.S.S.R. or the pact of his successor with Adolf Hitler.

Necessary though it is to realize the potentialities and magnitude of such events, it is equally essential not to fall into the other extreme. Not every battle is a cannonade of Valmy and not everyone is a Goethe who asserts with confidence: 'This day, and this place, mark the beginning of a new era in the world's history, and you can say: I was there.'

It must, however, be admitted that a growing chorus of competent observers of international affairs voiced their views in the past years as to the fundamental character of the changes by which our international society was being transformed for better or worse.

A few quotations may illustrate this assertion.

At the third session of the League Reform Committee, established after the Abyssinian *débâcle*, Professor Bourquin, the Chairman of the Committee, remarked: 'We are now passing through a period of crisis which goes far beyond the League of Nations, but which affects also the organization of international relations in the widest sense of that phrase, and the difficulties that we experience at Geneva are merely evidence of a trouble that is far more general and far more profound.'

¹ A.7., 1938, VII, p. 36.

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In 1938, the Prime Minister of the British Commonwealth expressed his 'feeling of revolt against the folly of mankind' and was 'appalled at the prospects'.¹ Mr. Eden painted the picture in still darker colours: 'It is utterly futile to imagine that we are involved in a European crisis that may pass as it has come. We are involved in a crisis of humanity all the world over. We are living in one of those great periods of history which are awe-inspiring in their responsibilities and in their consequences. Stupendous forces are loose - hurricane forces.'²

At the same time, M. Daladier, then French Prime Minister and Minister of National Defence, exhorted his constituents to rally at this vital moment, '*car tout au monde est en train de se battre autour de la France. Car une possible machine à guerre s'accumule chaque jour derrière les fleuves et les montagnes qui la bordent et si l'on ne tenait compte que du déclenchement de forces fatales, il semblerait que nous devrions tout d'être entraîné par cette tourmente*'.³

A similar note was struck on the other side of the Atlantic. The Secretary of State of the United States spoke of a world growing internationally more and more disordered and chaotic⁴ and Mr. Sayre thus analysed the situation: 'During the past few years, and particularly during the last few months, events have taken place which challenge the very existence of international order, and, indeed, the very fundamentals upon which alone a Christian civilization can be built. . . . The supreme question which we and all the world face to-day is whether or not we are to live henceforth in a world of law or a world of international anarchy'.⁵

Nor were the totalitarian States silent in this hour of anxiety and pessimism. They may be represented by the German Chancellor: 'The organization of human society is menaced. No single State structure will collapse, but a confusion of tongues, the new human dissonance, has fallen upon the world. . . . The world around us is

¹ Speeches at Birmingham, February 23d, 1938, reported in *The Times*, February 23d, 1938, and at Brighton House, Kettering, July 22d, 1938, reported *ibid.*, July 23d, 1938.

² Address at the annual dinner of the Royal Society of St. George, April 14th, 1938, reported *ibid.*, April 14th, 1938.

³ Speech at Lyon, June 13th, 1938, reported in *Le Temps*, June 13th, 1938. Addresses in a similar vein by the representatives of other member States of the League of Nations may be found in the Minutes of the January session of the League itself, Committee and of the One Hundred and First Session of the League Council.

⁴ Cordell Hull, *The Spirit of International Law*, address before the Temperance Bar Association, June 23d, 1938 (U. S. Government Printing Office, Washington, 1938), p. 14.

⁵ Broadcast address by Francis H. Sayre, Assistant Secretary of State, June 6th, 1938, 'American Foreign Policy', Washington, 1938, p. 1.

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filled with wars and rumours of wars. Unrest fills the nations and revolution shakes many countries.¹

Reichsminister Goebbels sensed the practical potentialities of such a major upheaval: 'It does not often happen that the world is divided afresh; that is an historical rarity. When it is once perceived that the hour is ripe, that the goddess of history has stepped down to earth and touched mankind with the hem of her cloak, responsible men must have the courage to grasp the hem of the cloak and not let go again. I have the impression that we are living in such an historic hour.'²

However dark the future may appear, a catastrophe such as any major war presents for humanity and civilization appears the proper time to re-assess and re-value those factors and forces which have made for chaos and order in our inter-State system.

Mankind has survived the year 999, the Black Death and the devastating wars of the Reformation and Counter-Reformation, including the 'Thirty Years' War. It has even been able to stand up to and to subdue Napoleon, the model of our modern dictators, to limit our examples to the history of Western Europe.

Similarly, there is no reason to assume that a world which has survived the decimations of the past should succumb even to the challenge of a totalitarian world war. Therefore, this book is not written with the emphasis upon the past. It attempts to analyse these aspects and the failures of past experiments in the establishment of international order with an eye on the future, on the peace to come. From this standpoint, the background of the war is a stern reminder of the futility of blue-prints and paper drafts which ignore the forces with the existence of which the rule of law in international affairs is incompatible.

This implies that a realistic analysis of the structure and forces of international society is a condition of sound international planning. But could we not limit our task to the safe undergraduate work of fact-finding? It is, however, as well to remember that any statement of facts implies a judgment which differs only in degree from any judgment on values. Further, no study limited to fact-finding can avoid the necessity of selection and choice as well as the elimination of facts. Both these activities are inseparable even from mere

¹ Proclamation at the opening of the Ninth N.S.D.A.P. Congress, reported in the *Western Mail*, September 8th, 1937. Hitler expressed similar views in his speech at the State banquet in Rome, May 7th, 1938, reported in *The Times*, May 9th, 1938.

² *The Times*, November 21st, 1938.

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fact-finding and do certainly not lack that element of judgment so carefully to be avoided.

In our opinion, the real problem is a different one. If the horror of judgment only implies that we must banish wishful thinking, not justified by reality and truth, from research, whether in the sphere of international affairs or anywhere else, we wholeheartedly agree with this attitude. For freedom of thought has only its social justification so long as the student keeps this *sine qua non* of research clearly and unwaveringly before him. In the words of Lord Baldwin, 'Statesmen, to-day, look upon the university as one of the bulwarks of that freedom of thought which is essential to living for the world. The university should be able to give all young men and young women the best of what there is. The university should always give them the truth. When learning becomes prostituted to politics, there are no depths to which it cannot descend. . . . Maintain at all costs the standard of truth'.¹ It would, however, not be in accordance with the postulate propounded by Lord Baldwin not to stress equally that though we may aspire to objective truth it may be beyond our limited human capacity to see more than a glimpse of the eternal light.²

In addition, a good many of these deductions which appear to us superficially to be derived from facts or at least from established results of research may, if we care to probe deeper, be unmasked, as subconscious and disguised judgments, based on cherished political, ethical or metaphysical *a priori* principles. In an epoch such as ours, no one can help having subjective opinions on fundamental questions such as State and individual, democracy and totalitarianism, nationalism and internationalism, or power politics and international order. It is, however, our duty to ourselves and to others to make such subconscious valuations conscious and to characterize them frankly as political valuations.³

In this way, we can avoid two obvious dangers which beset the way of the teacher and writer on international affairs. The type of expert who tries to avoid dangerous and controversial subjects in order to hurt nobody's feelings could hardly survive a world which has accustomed itself, at least since 1933, to receive a gradually

¹ Address to the University of Wales at Swansea, July 16th, 1938; in *The Times*, July 18th, 1938. See also Lord Macmillan's presidential address to the Twenty-seventh Conference of Educational Associations, in *The Times*, January 4th, 1939.

² Compare Nicolai Hartmann, *Ethik*, Berlin, 1926, pp. 43 *et seq.* and Gustav Radbruch, 'Le Relativisme dans la Philosophie de Droit', in *Archives de Philosophie et de Sociologie juridique*, 1934, pp. 106 *et seq.*

³ Max Weber, *Schriften zur Wissenschaftslehre*, Tübingen, 1922.

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increasing number of week-end shocks, and to suffer the horrors of totalitarian warfare. It would, however, be an over-optimistic assertion to assume that this type of expert has entirely disappeared. He has merely undergone a process of transmutation and can still be observed in two species. He presents himself as that super-objectivist who can explain and justify everything, and has lost the faculty of assessing behaviour even in accordance with conscious and frankly admitted *a priori* standards. It is true there are difficulties in the way of detached judgments which ought not to be minimized. For the facts which are accessible, just because of their multitude and the various ways in which they can be presented, are not such that they invite the mere distinction between white and black. Very often the choice lies more likely only between various shades of grey. In addition, it must be admitted that, in a system of power politics and secret diplomacy, not even the expert is in possession of the most essential facts unless he is in the position of a civil servant and then he is condemned to silence. But, nevertheless, vital events such as the non-application of the oil sanction in the Italo-Abyssinian War, the Spanish War, the Munich Settlement, the Nazi invasion of Poland or the downfall of France can be judged, whatever the unrevealed details may be.

Naturally it is easier to state the pro's and con's of attitudes taken and politics pursued and to leave it at that. But this attitude imperceptibly leads to the other mentality, which is closely akin to that of the escapist: that of the cynic who proclaims himself a realist and regards international affairs from the standpoint of the unconcerned *connoisseur*. This 'art for art's sake' mentality is as incompatible with the functions of the study of international relations in a democracy as the escapist mentality. For anyone to whom democracy is a reality, and who admits that human beings are more than mere instruments in a game of power politics, but that, on the contrary, they are ends in themselves, freedom of thought on international affairs must mean more. It is certainly work which involves detached analysis and observation. But as human relations are the object of these investigations, the research worker must legitimately devote his attention also to the constructive problems of planning.¹ It is

¹ Compare on this question E. Jäckh (editor), *Politik als Wissenschaft*, Berlin, 1931; Sir Alfred Zimmern, *Internationale Politik als Wissenschaft*, Berlin, 1933; H. Lauterpacht, *The Function of Law in the International Community*, London, 1933, p. 436; K. Mannheim, *Mensch und Gesellschaft im Zeitalter des Umbaus*, Leyden, 1935, pp. 115 *et seq.*; Pitman B. Potter, *An Introduction to the Study of International Organization*, New York, 1935, p. 481; W. S. Landecker,

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true such proposals cannot be put forward without making assumptions which are not derived from mere observation, but involve a certain element of direction and political postulation. As long as these implications and bases are pointed out and do not remain hidden, the suggestions founded on them do not lose their scientific character. Their specific value which distinguishes them from well-meant blue-prints drafted by dilettantes consists in the fact that their authors take, or at least ought to take, into account all those factors of which one becomes only aware through detached study and research.

The need for such a co-operative attitude on the part of the expert is accentuated by the special circumstances in which the Statesman and politician has to make decisions of far-reaching importance on questions of international organization.

An outstanding example is furnished by the drafting of the League Covenant. The Covenant was the first part of the Peace Treaty to be completed, and submitted to the Plenary Conference. Small wonder, therefore, that 'many clauses were accepted under the pressing necessity of ending the Commission's labours within a fixed time'.¹ Such rush work necessarily brings with it an 'element of confusion', which, according to Harold Nicolson, an eyewitness and member of the British Delegation, played an important role during the deliberations.² Therefore, it was probably not only intention but also pressure of time which was responsible for its sketchy character.³ In the words of Sir John Fischer Williams, 'no British parliamentary draftsman would own it as his child; it is a sketch, or perhaps it is better to say, an impressionist picture',⁴ and Professor Kelsen, in a minute analysis of the text of the Covenant, has convincingly shown how many of the ambiguities contained in this document were not at all the result of intentional formulation, but merely the inevitable outcome of bad and hurried drafting.⁵

While it is within the province of the Statesman to decide on the course to be taken, it is the task of the expert to advise him how the desired result can be achieved most rationally and effectively.

¹ 'The Scope of a Sociology of International Relations', in *Social Forces* (Vol. 17, 1938), pp. 177 et seq.; and E. H. Carr, *The Twenty Years' Crisis*, London, 1939.

² Robert Lansing, *The Big Four and Others of the Peace Conference*, Washington, 1922, pp. 137-8. See also H. Temperley, *A History of the Peace Conference*, London, 1920-4, Vol. II, pp. 24-6.

³ Harold Nicolson, *Peacemaking, 1919*, London, 1933, p. 6.

⁴ David Lloyd George, *The Truth about the Peace Treaties*, London, 1938, Vol. II, p. 1,497.

⁵ Sir John Fischer Williams, *Some Aspects of the Covenant of the League of Nations*, London, 1934, pp. 1-2.

⁶ Hans Kelsen, *Legal Technique in International Law*, Geneva, 1939.

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Objections which are frequently voiced against such co-operation between representatives of the political and research spheres appear to be derived from a deep-seated distrust that the technical adviser may hide his political likes and particularly his dislikes behind a cloak of ingenious arguments. Such an eventuality can never be entirely ruled out, as even this type of human being cannot escape the fate which it shares with humanity at large, that of belonging to the Aristotelian category of the political animal. What can reasonably be expected from technical experts is that they strive as hard as they possibly can to achieve the kind of objectivity which we have described before and do their best to distinguish between political assumptions and conclusions of detached research which follow from established and commonly accepted premises.

If the discussions at the Disarmament Conference, particularly those on the definitions of defensive wars or weapons, are quoted in proof of the thesis that it is easier to lay down such a postulate than to realize it, such an argument is only a dangerous half-truth.¹ For in this case, there was, as we shall discuss in more detail at a later stage,² no conflict between governments who wished to achieve peace and security by this short cut, and military and other experts who tried to prevent them from doing so. On the contrary, there was a perfect harmony between the governments and experts, both rallied on the side of national self-interest and power politics. The gulf which certainly existed separated them from those misguided sections of public opinion in all countries who had been made to believe that by this direct and sectional approach their desire for the outlawry of war could ever be realized.

Just as any party can find an advocate for its cause in any controversial law suit, it has not been, and cannot be, denied that any government which does not want to submit to the rule of law can find experts to prove that the object cannot be achieved.

The real test case, however, is provided when governments are anxious to effect vital changes. Precedents in the internal sphere, in connection with experiments in socialism or nationalization of key industries, suggest that there are always certain sections amongst experts whose political antipathy against such attempts induces them

¹ Compare Lord Robert Cecil's dictum: 'Lawyers were obstructing international arbitration in the same measure as naval experts were hampering international disarmament', *The Times*, May 12th, 1929.

² See, below, Chapter 18.

to stand aside, or to voice warnings not so much against the feasibility as against the desirability of such projects. It may even be that they use the less creditable tactic of disguising their opinion on the undesirability of such plans behind a barrier of arguments which appear to be concerned only with ways and means. Experience, however, seems to suggest that never, so far, has there been a united front of expert opinion which has made the achievement of such objects impossible. Even the governments of the U.S.S.R. had nearly always at their disposal that minimum of Russian and foreign experts which they required for putting into operation their schemes for social and economic planning. Similar possibilities on the international plane are suggested by the remarkable change in outlook on the part of the majority of teachers and writers in the Western democracies on international affairs. Whereas only a few years ago they seemed to be firmly arrayed behind the front of 'realism', caution and piecemeal development of international organization,¹ now even the super-State and federal union appear to have become practicable, and innumerable drafts for federal constitutions, emanating from the pens of experts and committees, are issued for private and public circulation.

What seems more encouraging than these cases of sudden conversion is the fact that the Government of this country has courageously taken the step of making use, during the war, of the benefits of that reservoir of independent experts who are at their disposal. In spite of criticism from various quarters, the Government has, as a number of discussions in the House of Commons indicate,² convinced itself that it could only profit, by associating with itself those experts who, within the framework of the Royal Institute of International Affairs, are willing to put their specialized knowledge at the direct disposal of the Government.

It only remains to discuss the methods by which we attempt to discuss our problem. The science of international relations is still in its infancy. Therefore it is in the peculiar position that there are not yet standardized methods of approach. As the various discussions on this subject inaugurated and sponsored by the International

¹ Compare the proceedings of the International Studies Conferences held under the auspices of the International Institute of Intellectual Co-operation on Collective Security, 1935, and on Peaceful Change, 1937-8.

² Compare *Hansard*, House of Commons, October 3rd, 1939 (col. 1,814); November 7th, 1939 (col. 68); November 21st, 1939 (cols. 1,037-40), and November 22nd, 1939 (cols. 1,194-5).

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Institute of Intellectual Co-Operation prove,¹ teachers have so far remained content to agree to disagree.

This means that the choice of method must, at least for the time being, remain a matter of discretion dependent partly on the individual preferences of teachers and writers and partly on the nature of the subject under discussion. It would, however, be exaggerating to over-emphasize this subjective freedom of choice between the methods available. For this situation is the product of a necessity, for which the limitation of our human mind and the specialization unavoidable in our time are responsible.

We can perhaps best explain this dilemma if we attempt to interpret the term *international relations* which forms part of the title of this book.

If we prefer the word *relations* or *affairs* to *politics*, it is only for the reason that the latter term seems *prima facie* to exclude the non-political aspects of international affairs, such as legal, economic, geographic or psychological, or, if it is to comprise these spheres, it acquires a vagueness which reduces it to the stage of meaninglessness.²

Our preference for international, as compared with the term *foreign affairs*, is connected with our conception of the international society which has to be conceived at least as one *activity* area.³

Therefore, the word *foreign* appears to obscure this essential aspect of international affairs and, in Deslisle Burns' trenchant formulation,⁴ betrays a certain provincialism of mind which seems parochial in an era of world affairs and world wars.

What do we understand by *international* affairs?

Official institutions, such as the Central International Office for the Control of the Liquor Traffic in Africa or the International Labour Office, share this epithet with private organizations such as the International of Nationalists and the International Goat-breeding Association.

These examples selected at random, which can be supplemented by reference to an excellent survey published under the auspices of the

¹ Compare e.g. the report on the Meeting on the University Teaching of International Relations, held during the Eighth International Studies Conference of 1935 (International Institute of Intellectual Co-operation, 1935), p. 25.

² An excellent definition of politics is given by Sir John Fischer Williams: 'the science or art of the readjustment of institutions to the changing needs of mankind', *International Change and International Peace*, Oxford, 1932, p. 1.

³ See, below, Chapters 1 and 12.

⁴ C. Deslisle Burns, *International Politics*, London, 1920, p. 5.

League of Nations,¹ suggest that the everyday use of the word *international* does not provide any immanent criterion for the determination of this adjective. The word is used both in a wider and narrower sense than is advisable from our special point of view.

There are relations between nations which are international in the strict sense of the word, e.g. if two distinguished goat-breeders, representatives of camping clubs or boxing unions of different countries meet and organize on the international plane. Apart from exceptional cases, as could be witnessed in recent Continental football matches, such relations are highly peripheral from the standpoint of the international society, even wanting in their relevance from the standpoint of international education. Similarly, even relations between nations such as the French and Bretons, the English, Scotch and Welsh peoples are noteworthy from this point of view only in special circumstances, e.g. when they deteriorate into a minority problem.

Conversely, the relations between individuals in key positions in the sphere of industry, banking, press, culture or religion may be highly important from the standpoint of the international society. Financiers of the type of Kreuger, who by his fifteen loans and monopoly concessions became an international power for a short spell of time,² and Rickett, who concluded his mysterious deal with the Abyssinian Government on the eve of the war between Italy and Abyssinia,³ offer illustrations of this thesis.

Equally, there are relations between groups which are not nations, such as between parties or churches, which nevertheless may be highly relevant from the standpoint of the international society.

Even matters which certain nations may regard as exclusively their own domestic and internal affairs may – if we adopt this criterion – become international questions. The effects of the migration policies of the United States of America, Canada or Australia or of the tariff policies of these and other countries upon Japanese foreign policy would be a case in point.⁴

This approach by which we attempt to delimit the phenomenon of *international* relations by the introduction of the category *International Society* finds its justification, as any element of a definition introduced

¹ *Handbook of International Organizations*, Geneva, 1938.

² Compare the present writer's *Die Kreuger-Affäre*, Munich, 1931.

³ *The Times*, September 2nd and 4th, 1915.

⁴ George W. Keeton, 'The Breakdown of the Washington Treaty and the Present Sino-Japanese Conflict', in *The New Commonwealth Quarterly*, 1931 (Vol. IV), pp. 3 et seq.

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apparently in an arbitrary fashion,¹ in the case or artificiality with which such a definition stands the test to which we shall have to submit it in the course of our analysis, i.e. whether it enables us to grasp all the essential aspects of our problem, and to eliminate everything that is merely incidental and peripheral.

It is therefore suggested that international relations should be defined as the relations between groups, between groups and individuals and between individuals, which essentially affect the international society as such, e.g. its development, structure or working.

Bailey's definition of international relations comes relatively near to ours. There remains, however, an essential difference as he limits the field to relations 'in so far as they affect the relations between different nation States in the contemporary world'.² Though we shall have to point out at a later stage why the nation State occupies at present a key position in the international society,³ any opinion which centres international affairs on these stars in the dramas on the international stage, appears to underestimate unduly the importance of the one and whole society without which the nation States could not perform their prominent function, and of the cast of those lower grades in the social hierarchy who provide the background against which these overmighty members of the international society are thrown into relief.

The understanding and interpretation of such social phenomena, their causal relationships, and the types of social behaviour, is the purpose of sociological research.⁴ It is the special function of this science to contribute to the classification of types and forms of social relations, to assess the relations between different parts of social life and to analyse the static and dynamic factors in society.⁵ The study of international relations is a special branch of sociology which is concerned with those phenomena which essentially affect international society as such.

Therefore it cannot be particularly closely connected with any special branch of science. History, Law, Economics, Geography,

¹ Compare E. Husserl, *Ideen zu einer reinen Phänomenologie*, Halle, 1928, and M. Scheler, 'Der Formalismus in der Ethik und die materiale Wertethik', in *Jahrbuch für Philosophie und phänomenologische Forschung*, Vols. I and II; also, *Die Idee des Friedens und der Pazifismus*, Berlin, 1931.

² S. H. Bailey, *International Studies*, London, 1938, pp. 266-7.

³ Compare, below, Chapters 2 and 3.

⁴ Max Weber, *Wirtschaft und Gesellschaft*, Tübingen, 1922, pp. 1, 6, 7.

⁵ M. Ginsberg, *Sociology*, London, 1934, p. 11; K. Mannheim, *l.c.*, p. 200. See also Lionel Curtis' plea for a comprehensive interpretation of human motives and affairs in *Civitas Dei*, London, 1937, Vol. II, p. 221.

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Psychology, Anthropology and even the Natural Science may contribute methods and material which may potentially be helpful in the understanding of particular aspects of international affairs. Each of them and their results ought to be used in so far as they can assist in finding the nearest approach to a comprehensive understanding of these complicated questions and situations.

The common denominator is the special viewpoint, the specific angle from which these problems are analysed: the deeper understanding of the international society, its development, constituent elements, structure and the trends towards its integration, differentiation and transformation.

To give at least two examples which may explain more fully our conception of international relations:

To what extent is the student of international relations interested in trade barriers? In the first place, trade obstacles are for him not so much economic methods contributing to the regulation of a system of national economy, but actual, or at least potential, sources of friction, and possibly discrimination, between various States.

This political function is paramount for him if he accepts the thesis that economics are only a function of politics,¹ whereas the more detailed explanation of the mechanism of the working of customs or import duties can remain a minor concern to the sociologist who analyses international relations. Equally, the fact that certain measures of this kind may be incompatible with treaty obligations between certain States is in itself only of subordinate importance and becomes relevant only indirectly, e.g. if other States or internal adversaries of these measures arouse public opinion against an alleged violation of international law, and if the former make their legal rights one of the reasons why they take counter-measures of any sort. Finally, geography may help in the delimitation of the territorial scope of such measures, and group psychology may assist, in cases in which an economic interpretation does not give an adequate rational explanation, by the elucidation of those subconscious and perhaps even psychopathic features connected with the introduction of these trade impediments or opposed to their abolition.

Or, what are the aspects of the work of the League of Nations which deserve the special attention of the student of international affairs? In all likelihood, an historical, legal and psychological approach will prove more helpful in assessing the successes and failures of the

¹ Compare Bertrand Russell, *Power*, London, 1938, e.g. p. 126.

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collective system of Geneva, than any result we may expect from the application of methods of geography, economics, education or strategy, although they, too, are important, if relatively less vital than the others for the understanding of this problem.

In the words of Sir Alfred Zimmern,¹ the 'fascio of methods', which the student of international affairs has to use for the purposes of his analysis must depend on the one purpose of which he ought not to lose sight: that he can never hope adequately to understand the phenomena if he limits himself to the one-way road of the legal, historic or economic approach. The choice of the tools must be guided by the material. If these methods are applied properly, such an analysis leads (at least in the realm of theory) to the synthesis and synopsis which is the essence and particular value of sociology.

This ideal implies the main dangers which beset any research in this sphere. Self-limitation to those aspects, with which the particular writer or teacher feels specially acquainted, necessarily leads to a specialization which in itself is only of a highly limited value from the standpoint of a sociological understanding of the international society. It may, however, have its indirect results, if it supplies the sociologist with the necessary material which he can use for his own purposes. Only it must not be assumed that this work, however absorbing in itself, is more than mere preparatory assistance for the synthetic tasks which then still lay unsolved ahead. But the shortcomings of the specialist, who is at least master in his own field, are nothing compared with the harm which can be done by the dilettante, who is equally at home in the legal, psychological, economic and whatever fields of international relations may exist, and who covers his prejudices and profound ignorance with a few cleverly selected quotations and references. This twentieth-century caricature of encyclopædism may put us on our guard against the obvious dangers of the synthetic approach, which really presupposes the synthetic man. Perhaps team-work of experts comes nearest to this ideal, if they can sufficiently co-ordinate their meta-scientific assumptions.² Whatever the solution may be, some of those considerations which we have put forward in this Introduction may serve as a constant reminder of how vast our subject is, and how indispensable it is to approach it in that spirit of humility which is only the outcome of having consciously

¹ Paper prepared for the meeting quoted above in note 1, p. 23.

² George W. Keeton, 'The Approach to International Affairs, with special reference to Tutorial Classes', in *Report of a Conference of Tutors held under the Auspices of the Workers' Educational Association*, London, 1939, p. 4.

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perceived the inseparable gap between aspiration and achievement. In this spirit we propose to deal with the subject of international or 'foreign' affairs which, Lord Curzon once said,¹ 'are really domestic affairs – the most domestic of all our affairs, for the reason that they touch the life, the interest, and the pocket of every member of the community'.

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¹ Quoted from *The Times*, June 22nd, 1938. See also a slightly different but equally important version in Lord Curzon's speech in the First Session of the Council, January 16th, 1920 (*O.J.*, 1920, p. 21): 'The peoples of all countries have now learnt that foreign affairs are their vital concern, and they are demanding, with ever increasing insistence, that international obligations shall not be incurred without their knowledge and behind their backs.'

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PART ONE
POWER POLITICS

CHAPTER I

THE DEVELOPMENT OF THE INTERNATIONAL SOCIETY

THE diplomatic documents, decisions of tribunals and literature referring to the social framework of international affairs have one feature in common: the highly liberal terms in which they describe it. It is variously called the international community, the community or concert of civilized States, the community of international law, the family of nations, the international fraternity, and the society of nations.¹ Since, however, there are obviously nuances of

¹ A few examples may be selected at random:

(a) The term 'international community' is frequently used in Oppenheim-Lauterpacht's *International Law*, London, 1937, Vol. I, e.g. p. 13. The same phrase is to be found in the dissenting opinion of Mr. Weiss in the case of the *S.S. Lotus*, *Permanent Court of International Justice*, Series A, No. 10, p. 43, and is expanded to 'the international community of modern States' in a judgment of the Commercial Tribunal of Luxemburg, 1930 (*Annual Digest*, 1929-30, p. 8). To give an example from diplomatic practice, the term 'community of Christian nations' is used by Don D. F. Sarmiento (Chile) in a note to Señor Ribeyro, May 1st, 1864 (*Digest of the Diplomatic Correspondence of the European States, 1856-1871*, Berlin, 1932, Vol. I, No. 470).

(b) 'Family of nations' as equivalent to 'international society' or 'international community' is used by H. Lauterpacht in *The Function of Law in the International Community*, London, 1933, pp. 421-3. In *The Family of Nations*, New York, 1938, p. 106, Nicholas Murray Butler distinguishes between a 'genuine' and a 'merely nominal' family of nations. The term is also contained in a judgment of the Court of Appeals of New York in 1923 (235 N.Y. 255; 139 N.E. 259). A complementary example from State correspondence may be found in the note from Manuel al Tocornal, *á los Ministros de Relaciones exteriores de las Potencias extranjeras*, May 4th, 1864, *Digest of Diplomatic Correspondence*, cited above, Vol. I, No. 471. Sarcasm is perhaps not entirely absent from the Rescript of the Emperor of Japan of March 27th, 1933, in which he announces that the withdrawal of his country from the League of Nations does not mean that it 'will isolate itself thereby from the fraternity of nations', A. B. Keith, *Speeches and Documents on International Affairs, 1918-1937*, London, 1938, p. 268.

(c) 'International Society' is used by Charles Cheney Hyde in his article on 'The Influence of Mental Reservations on the Development of International Law', in the *American Journal of International Law*, Vol. 24 (1930), p. 358, by J. S. Reeves in his lectures on '*La Communauté internationale*', in *Recueil des Cours de l'Académie de Droit International*, Tome 3 (1924), p. 17, and by Arrigo Cavaglieri in *Lezione di Diritto Internazionale*, Naples, 1925, p. 8. The term is also to be found in a judgment of the U.S. Circuit Court of Appeals, First Circuit, 1822, 2 Mason's Reports 409.

(d) 'Community of international law' (*Völkerrechtsgemeinschaft*) is a term particularly favoured by German authors. See Alfred von Verdross, *Die Verfassung der Völkerrechtsgemeinschaft* (Vienna and Berlin, 1926), and Karl Schmid, *Die Rechtsprechung des Ständigen Internationalen Gerichtshofs*, Stuttgart, 1932, p. 39.

(e) The interchangeability of these terms is particularly noticeable in Lauterpacht's book (see (b) above), and in Art. 1 of the resolution on the recognition of new States and Governments adopted by the Institute of International Law at Brussels, April, 1936.

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meaning, it seems advisable to keep strictly to the terminology which most nearly corresponds to the nature of these group relations, especially as sociological research makes a clear distinction between the two main groups of social relations – community and society. In accordance with this established practice, a community may be defined as a social group in which behaviour is based on the solidarity of members, a cohesive force without which the community cannot exist.¹

The Permanent Court of International Justice was confronted with this problem when it had to define the term 'community', which occurred in Article 6, Paragraph 2, of the Convention of November 27th, 1919, between Bulgaria and Greece. The Court was asked, *inter alia*, to give an opinion in an advisory capacity on the criterion to be applied in order to determine the nature of a community within the meaning of the above Convention.² The Bulgarian Government maintained that 'a community, being a legal fiction, only exists by virtue of the law of the country in question'.³ The Court, however, distinguishing between a commune – the product of public municipal law⁴ – and a community, composed in this case of a minority, declared itself in favour of a sociological interpretation, and refused to give the word a specific meaning other than the 'general traditional conception'. 'By tradition, which plays so important a part in Eastern countries, the "community" is a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.'⁵

¹ Ferdinand Tönnies, in *Gemeinschaft und Gesellschaft*, Leipzig, 1935, pp. 3 *et seq.*; Max Weber, *Grundriss der Sozialökonomik*, III. Abteilung, *Wirtschaft und Gesellschaft*, Tübingen, 1922, p. 21; Salvador de Madariaga, *Theory and Practice in International Relations*, London, 1937, pp. 10–11. See also Sir Henry Sumner Maine, *Ancient Law, Its Connection with the Early History of Society and its Relation to Modern Ideas*, London, 1930, pp. 180 *et seq.*; and note 1, p. 35, below.

² Permanent Court of International Justice, Series B, No. 17 (*The Greco-Bulgarian 'Communities'*), p. 5.

³ *ibid.*, p. 6.

⁴ "The 'commune' is a territorial district constituted by public municipal law as an administrative and political unit, and remaining the same, no matter who its inhabitants may be", *ibid.*, p. 29.

⁵ *ibid.*, p. 21. The Court reaffirmed this decision in its Advisory Opinion of April 6th, 1935, on the Minority Schools in Albania (Series A/B, No. 64, p. 11).

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The criterion of solidarity is the decisive test in the classification of social groups, and if this bond is lacking, or is not strong enough to create the necessary cohesive force, the collective entity fulfils another function – the adjustment of diverging interests. This is the essential feature of a society. Whereas the members of a community are united in spite of their individual existence, the members of a society are isolated in spite of their association.¹

The former group may be illustrated by a family, Church or nation; the latter by a joint stock company. To avoid misconstruction, it must first be emphasized that, although neither group could exist without some measure of cohesive force and some kind of interdependence among its members, it is the difference in kind which essentially distinguishes, for instance, a joint stock company from a Church. Secondly, the terms 'community' and 'society' in this context represent 'ideal' types in the technical sense, as used by Max Weber,² the German pioneer in the field of sociology. They are, therefore, 'standards of reference', pure types which give the essence of the phenomenon. If actual groups are to be classified according to the standards, a considerable amount of abstraction is inevitable, and careful judgment alone will determine whether clearly recognizable features predominate in a certain group, or whether it should be classified as a hybrid.

Whatever our views on the Middle Ages may be – whether we regard them as a 'dark' or 'enlightened' epoch – we must admit that the inter-Christian State system had many features which make it inclined to classify it as a community.

True, there were devastating wars and cruel excesses, but even

¹ Tönnies, *l.c.*, p. 40; Weber, *l.c.*, pp. 21–2. We would accordingly maintain that a group defined by Oppenheim-Lauterpacht, *l.c.*, Vol. I, p. 11, as a community is either 'neutral' or a society ('the body of a number of individuals more or less bound together through such common interests as create a constant and manifold intercourse between single individuals'), and that the 'society' described by J. L. Brierly in his article on 'The Rule of Law in International Society', *Acta Scandinavica Juris Gentium*, 1936, p. 4, is a community. ('A society needs a spiritual as well as a material basis; it cannot exist without what Rousseau called the "*volonté générale*", a sentiment among its members of communion and of loyalty, of shared responsibility for the conduct of a common life, and it is just here that doubts of the existence of an international society find their justification.') It need hardly be mentioned that from the standpoint of detached sociological analysis, no preference is given to the one or to the other type of group relations. Wolgast, unlike Max Weber, whose approach to these problems is entirely unbiased, also makes this distinction between community and society; he and other recent German writers on international law, however, attempt to imply a political ideology in the distinction between the international 'society' and the 'community' of the German people, created in their opinion by National Socialism. See in this connection Eduard Bristler, *Die Völkerrechtslehre des Nationalsozialismus*, Zürich, 1938, pp. 99 *et seq.*

² *l.c.*, p. 10. See also Werner Sombart, *Die Drei Nationalökonomien*, Berlin, 1930, p. 245.

the relations between the Christian and Islamic worlds a degree of humanity and chivalry can be witnessed which appears far remote in a century confronted with the neo-barbarism of Nazism and its deeds in Czechoslovakia and Poland.

It is true that the Church restricted freedom of thought and research. Within these limitations, however, the wandering scholar enjoyed the benefits of a member of a lodge in every country of Europe. He could expect a community of outlook among the members of every *universitas*, a common basis and background which would be utterly incomprehensible to the research worker in the large parts of the world which are to-day governed by totalitarian systems.

In looking back at the Middle Ages, we are not so much impressed by any diversity which may be traced in its annals as by the community of language created by the common use of Latin amongst educated people, by the common codes of honour binding soldiers all over Europe, by the common architecture of cathedrals and by the religious unity of Europe. These tendencies towards cohesion seem to outweigh those obvious features of dissension and disruption which can be observed also in the Europe of the Middle Ages. All these elements created a solidarity which allows us to classify the *unus corpus Christianum* as a community.

This Christian commonwealth of the Middle Ages broke down under the onslaught of a number of forces. In the economic sphere capitalism replaced feudalism. New classes, the manufacturers and traders, arose. The use of super-weapons strengthened the hands of those who could afford them. Equally the mercenaries who replaced the feudal levies were at the disposal of the financially strong. The movements of the Renaissance and Reformation destroyed those common cultural and religious bonds which still held the shaking building together. This general upheaval was accompanied by the discovery of new continents, the exploitation of which gave further impetus to the disintegration in progress.¹

A *bellum omnium contra omnes* seemed inevitable between the Leviathans, the absolute and dynastic States, each of which regarded itself as an ultimate end and as responsible to no one. Therefore, in Hobbes' words, it became the main problem for mankind to get themselves out 'from that miserable condition of Warre which is

¹ A masterly summary of the driving forces behind this development is to be found in Lionel Curtis' *Civitas Dei*, London, 1934-7. See also G. van Vollenhoven, *The Law of Peace*, London, 1936, pp. 6 *et seq.*, M. Bonn, *The Crumbling of Empire*, London, 1938, pp. 15 *et seq.*, and N. Bentwich, *The Religious Foundations of Internationalism*, London, 1933.

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necessarily consequent . . . to the naturall passions of men, when there is no visible Power to keep them in awe, and tye them by feare of punishment to the performance of their Covenants'.¹

There has been an attempt to understand modern international society by the equation of international law and international society. There certainly exists a relationship between both, and, as the legal system of the international society is much easier to analyse, it may be possible in this way to throw some light on the development and nature of the international society. The fact that law and society are correlative terms² and that law is a necessary framework for every society³ does not assist us in any further elucidation of our problem without further examination. For the functions which law fulfils in various communities and societies are not necessarily the same.

The law which regulates the life of a community such as a family or of an organization such as the Catholic Church generally formalizes only customary behaviour which would be observed even without its existence. It defines the relations between members which the majority regards as substantially sound and adequate, and finds its main justification in its application to abnormal situations. It is the visible expression of common values and of relationships which are, as such, a valid and binding reality for the greater part of the members.

The law regulating the relations between the members of a society, such as a joint stock company, has to fulfil a different function. Its purpose is to make limited co-operation possible between individuals who, being anxious to maintain and improve their own positions and seeking primarily their own advantage, are therefore, at the best, only prepared to apply in proportion to their actual power the principle of reciprocity in their relations with each other.

Therefore an examination of the stock of religious and moral values incorporated into the legal system of the international society offers more accurate clues as to the character of this group than mere assertions or general impressions, which, even if intuitive guesswork hits the nail on the head, are necessarily open to attack on the grounds of over-generalization and lack of evidence.

¹ Hobbes, *Leviathan*, Oxford, 1929, p. 128.

² Brierly, *l.c.*, p. 3.

³ A. L. Goodhart, 'The Nature of International Law', in *Transactions of the Grotius Society*, London, 1937, Vol. 22, p. 38. See also John Westlake, *Chapters on the Principles of International Law*, Cambridge, 1894, p. 3, J. S. Reeves, *l.c.*, p. 51, and Sir Alfred Zimmermann, 'International Law and Social Consciousness', in *Transactions of the Grotius Society*, London, 1935, Vol. 20, p. 43.

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The background of Hobbes' state of nature explains why the sixteenth and seventeenth centuries looked to international law for salvation much as the League of Nations in 1917 or Federal Union in 1940 seem to the believers the solution in our own time. Thinkers and writers, confronted with the internecine wars and chronic anarchy of their time, again became conscious of the fundamental values common to Catholics and Protestants alike. In conformity with the spirit of the age, this realization was fused with the Renaissance rediscovery of classical philosophy and its conception of humanity as a 'society of beings endowed with reason'.¹

Thus the pyramidal structure of the Medieval community, which had culminated in the jurisdiction of the Pope and Emperor, was replaced by the principle of the Christian natural law: '*Coniunctio hominum cum Deo, coniunctio hominum inter sese.*' It was in an atmosphere still permeated by a universalistic spirit that the Christian law of nations was born.²

At a time when the Christian law of nations was still more an aspiration than a reality influencing the practice of inter-State relations, and before the specific obligations it involved could contribute decisively to the integration of a community based on its principles, a new process had begun. The Age of Discoveries brought the five continents of the world into contact, and the characteristic stamp of this relationship was the active and dominating part played throughout by the European countries. In the final phase these Powers asserted their claim to annex the newly discovered territories as a right derived from natural law and justified by the fiction of the *territorium nullius*.³ Whenever this principle was not applicable the right of commerce with the non-European countries was asserted and gradually developed from an imperfect into a fundamental right.⁴ The non-Christian States were also as a matter of course regarded as subject to the Christian law of nations, although it was sometimes admitted that 'they may, on some points of the law of nations, be entitled to a very relaxed application of the principles,

¹ Grotius, *De Jure Belli ac Pacis*, Oxford, 1925, Bk. I, chap. 1, p. 34. See also James Brown Scott's introduction to Grotius, *ibid.*, Vol. II, p. xxx, and Coleman Phillipson's introduction to Alberico Gentili, *De Jure Belli Libri Tres*, Oxford, 1933, Vol. II, p. 120.

² Compare von Verdross, *l.c.*, pp. 39 *et seq.*, and Keeton-Schwarzenberger, *Making International Law Work*, London, 1939, pp. 15 *et seq.*

³ Oppenheim-Lauterpacht, *l.c.*, Vol. I, p. 438: 'territory . . . inhabited by natives whose community is not to be considered as a State'.

⁴ Victoria, *On the Indians*, Washington, 1917, pp. 152-3; Gentili, *l.c.*, Vol. II, pp. 89 *et seq.*; Lowes Dickinson, *The International Anarchy*, London, 1926, p. 68; Max Huber, *l.c.*, pp. 5, 35; von Verdross, *Völkerrecht*, Berlin and Vienna, 1937, p. 201.

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established by long usage, between the States of Europe, holding an intimate and constant intercourse with each other'.¹

A more complicated problem faced the Christian States in the attitude of China, where the Western traders were contemptuously regarded by officials of the 'Middle Kingdom' as representatives of 'immature and uncivilized' peoples. The Christian law of nations was here confronted with another system of law claiming potentially universal validity.² The European and American nations were content to maintain the principle of equality of States against this assertion,³ and in the Near as well as in the Far East a temporary solution, corresponding to the respective strength of the Powers, was found in the Capitulation treaties, which the Western powers regarded as 'essential to the peaceful residence of Christians within these countries, and the successful prosecution of commerce with their people'.⁴

Thus, by the formal admission of the Ottoman Empire to 'participate in the public law and concert of Europe',⁵ and by the extension of the European-American law of nations to the Far Eastern States, the Christian law of nations gradually came to be applied by all sovereign States in their relations with one another.

The original standards of value underlying this legal system were affected in two ways by this development. It followed from the nature of the relations between the Western and Eastern States that the latter accepted the new rules unwillingly as an unavoidable necessity, and regarded the obligation to keep them rather as a question of prudent outward conformity than as a moral duty.⁶ On the other hand, the fact that international law was applied between States regardless of their attitude towards the religious foundation of the Western States, helped to let slip into oblivion the spiritual basis and historical sources of this legal system. The *Christian* law of nations was thus identified

¹ *The Hartige Ilane case*, High Court of Admiralty, 1801 (3 C. Rob. 324); see also the *Madonna del Burso case* (4 C. Rob. 169) and H. A. Smith, *Great Britain and the Law of Nations*, London, 1932, Vol. I, pp. 14 *et seq.*

² See Jean Escarra, *La Chine et le Droit International*, Paris, 1931, and Earl H. Pritchard, *The Crucial Years of Early Anglo-Chinese Relations, 1750-1800*, Washington, 1936, Research Studies of the State College of Washington, particularly the pertinent observations on pp. 107 and 111.

³ Wheaton's *Elements of International Law* (ed. A. B. Keith), London, 1929, Vol. I, p. 30.

⁴ *In re Ross*, United States, Supreme Court, 1891 (140 U.S. 453).

⁵ Art. 7 of the Treaty of Paris (1856).

⁶ Thus the judgment quoted in note 4, above, rightly speaks of 'the assimilation of its [the Japanese] system of judicial procedure to that of Christian countries'. See also Sir Thomas Holland, *Lectures on International Law*, London, 1933, p. 37, L. Curtis, *l.c.*, Vol. II, p. 340, and A. J. Toynbee, *A Study of History*, London, 1934, Vol. I, p. 150.

with, and gradually replaced by, the international law of *civilized* nations.¹

Is there any criterion by which it can be decided whether a State belongs to the 'civilized and commercial nations of the World', as they are called in a judgment of the Supreme Court of Hongkong?² In the absence of any formal procedure under international law, it was mainly left to writers to elucidate the question of admission to its domain.³ Commercial agreements and the awards of national and international tribunals on the treatment of foreigners in contravention to the minimum standards of civilization⁴ provide further material for analysis.

From these sources it may be concluded, without undue generalization, that a civilized State must give protection to the life, liberty and property of foreigners more or less in accordance with the liberal traditions of the '*bürgerliche Rechtsstaat*'.⁵ Only in exceptional cases, such as religious, national or racial minorities, have international treaties laid down minimum standards of civilization for the treatment of nationals by their own State. In these agreements the status of the protected groups is likened to that of foreigners and even improved, in comparison with the latter, when special consideration is granted to the community as distinct from the individuals composing it.⁶ Thus the continual process of the secularization of international

¹ Lord Coleridge, C.J., in *The Queen v. Keyn* [1876] 2 Ex. D. 63, 133, 4. *United States v. the schooner La Jeune Eugénie* (1822, 2 Mason's Reports 409), the *Antelope* (United States Supreme Court, 1825, 10 Wheaton 66); the *Paquete Habana*, the *Lola* (United States Supreme Court, 1900, 175 U.S. 677); Holland, *l.c.*, pp. 41 *et seq.*; F. L. Smith and N. W. Sibley, *International Law as interpreted during the Russo-Japanese War*, London, 1907, p. 9; Wheaton, *l.c.*, Vol. I, p. 30; Axel Möller, *International Law in Peace and War*, London, 1931, Part I, p. 10; Article 38, paragraph 3 of the Statute of the Permanent Court of International Justice.

² The *Prometheus* case (2 Hongkong Law Reports, 207).

³ See Hyde, *International Law*, Boston, 1922, Vol. I, pp. 17, 49, and Kunz, 'Zum Begriff der "Nation Civilisée" im Modernen Völkerrecht', in *Zeitschrift für öffentliches Recht*, Vol. VII, pp. 86 *et seq.*

⁴ Typical examples are the *El Triunfo Co.* case between the U.S.A. and San Salvador, 1902 (U.S. Foreign Relations, 1902, p. 859), and the Roberts case between the U.S.A. and Mexico: 'That test is, broadly speaking, whether aliens are treated in accordance with ordinary standards of civilisation' (A. H. Feller, *Mexican Claims Commission*, 1921-1934, New York, 1935, p. 143). See also Edwin Borchard, *The Diplomatic Protection of Citizens Abroad*, Washington, 1915, pp. 27, 29, H. A. Smith, *l.c.*, pp. 18, 31, and W. Friedmann's articles in the *Contemporary Review*, 1937, pp. 62 *et seq.*, and in the *Fortnightly*, 1937, pp. 432 *et seq.*

⁵ The German Supreme Court identifies 'zivilisierte' and 'bürgerliche Rechtsstaaten' which form 'eine in der Neuzeit immer mehr anerkannte Kultur- und Rechtsgemeinschaft' (R.G.Z. 80, pp. 264 *et seq.*).

⁶ Particularly instructive in this respect are the documents contained in the *Digest of the Diplomatic Correspondence of the European States, 1871-1878*, Berlin, 1937, Vol. I, Nos. 3, 11, 456, 497; Clemenceau's letter to Paderewski of June 24th, 1919, and the views expressed by the Permanent Court of International Justice in the cases of the German Settlers in Poland (Series B.6, p. 24), and of the Minority Schools in Albania (Series A/B, No. 64, p. 19).

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law moved another step away from its historical sources and original spiritual basis. A certain degree of efficiency in the running of the State machinery, a measure of toleration and a minimum concern for the individual as such, had become the only standards of uniformity still required by international law. The process of the elimination of spiritual values from international law was carried to its logical conclusion by the legal doctrine of positivism which considerably accentuated and accelerated the development described above, and which reached its climax at the end of the nineteenth and beginning of the twentieth centuries.¹ According to this school of thought, States are subject to international law only by their express or implied consent. It depends on the extent of the realism of these writers whether the concept of consent comprises 'all the facts through which common consent can possibly come into existence'² or whether certain sources are dogmatically excluded from the sphere of implied consent without due regard for the actual practice of States.³ Whereas the latter interpretation forfeits its claim to positivism on account of its method, and may more appropriately be called 'voluntarism', the former at least gives spiritual values an opportunity of creeping into the realm of international law through the back door of implied consent. The vital difference between the development so far discussed and this attitude is, however, apparent. Formerly the law was a truth to be sought after, but now it becomes the equivalent of the will of those who give or refuse their consent. The relation between international law and spiritual and other standards of value ceases to be regulated by a process of subconscious growth and becomes dependent on the will of those whose behaviour is to be restrained or refined by the law. Thus the last remnants of the old universalistic conception of law disappear and an atomistic outlook wins the day.

The doctrine of positivism finally broke down the distinction between civilized and uncivilized States, which had been the last remaining barrier to indiscriminate heterogeneity. In the words of a distinguished representative of this school of thought: '*La famille des nations est l'ensemble des États (civilisés et non civilisés) et des autres sujets du*

¹ Oppenheim-Lauterpacht, *loc. cit.*, Vol. I, p. 99.

² *ibid.*, p. 23. See also pp. 15, 17, 27-8; Anzilotti, *Lehrbuch des Völkerrechts*, Berlin and Leipzig, 1929, pp. 48 *et seq.*, particularly p. 53.

³ For an outspoken but justified criticism of this attitude, see von Verdross, '*Les Principes généraux applicables aux rapports internationaux*', in *Revue Générale du Droit International Public*, 1938, p. 44. See also J. I. Brierly, *The Law of Nations*, London, 1936, pp. 39-45, on the fiction of implied consent; and Viktor Bruns, '*Völkerrecht als Rechtsordnung*', in *Zeitschrift für ausländisches öffentliches Recht*, Berlin, 1929, p. 12.

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droit international public.¹ This 'achievement' has been tellingly interpreted by Professor H. A. Smith: 'In practice we no longer insist that States shall conform to any common standards of justice, religious toleration and internal government. Whatever atrocities may be committed in foreign countries, we now say that they are no concern of ours. Conduct which in the nineteenth century would have placed a government outside the pale of civilized society is now deemed to be no obstacle to diplomatic friendship. This means, in effect, that we have now abandoned the old distinction between civilized and uncivilized States.'²

Thus, through the mirror of international law, we can observe the development of the international society from its revolutionary starting-point, the break-up of the Christian Commonwealth of the Middle Ages. In little more than four centuries the *Civitas Christiana* has gradually covered the whole world with the framework of a universal society. This result was achieved at the price of the elimination of the spiritual values common to the former Christian community, and its transformation from a community into a society.

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CHAPTER 2

THE DYNAMICS OF INTERNATIONAL SOCIETY

IF we attempt to gain an impression of the dynamics of international society, the first impression is one of bewilderment. The international society is not separated in space from those other groups which compete with it in the struggle for loyalties which is going on all the time between various associations, communities and societies. In the end they all appeal to the individual, the ultimate basis of the international, as of any other, society or community and the subject-object of all these activities. States, nations, churches, parties, sectional economic interests, news monopolies and international institutions are some of those social forces which we see at work in the international society.

Groups and their representatives, not the individual as such, seem to be of decisive importance in this social environment. As the international society more and more lost all those features which bore semblance to a community, this phenomenon can be easily explained. For in any group not governed by the principle that the welfare of the whole must come before that of its members, the relative importance of social forces corresponds to their actual strength.¹

Strength is measured by reference to past trials and by forecasting the likely display of energy in potential strife. The standard is, therefore, power in case of conflict.

It is perhaps easiest to illustrate the interplay between some of these social forces which we have mentioned, and their relative importance by reference to an *actual* conflict. We choose the Italo-Abyssinian War,² as it is a recent episode, but nevertheless lies back a sufficient time to allow a detached analysis. The methods which we are going to apply are those of a doctor who dissects a body for experimental

¹ Compare, below, Chapters 3 and 7.

² See the masterly but subjective analysis of A. J. Toynbee, in *Survey of International Affairs*, 1935, Vol. II, London, 1936, and the present writer's articles on the Italo-Abyssinian dispute in the *New Commonwealth Quarterly*, 1935, Vol. I, and 1936, Vol. II.

purposes. This metaphor may help us to remember that in doing so we only keep the parts in our hands, but deprive ourselves of all those elements which only the living body presents: the interaction and interdependence between the various limbs. At this stage of our survey we shall not be so much interested in the answer to the question which we put forward as in indicating the complex character of the elements which we have to take into account.

First let us deal with the two belligerents, obviously the two main factors: What is Italy? The Italian people, Mussolini, the King, the Fascist Party, the Army, the banks and manufacturers (internal and/or foreign)? Or, to turn to former Abyssinia: Was it the Emperor, the local chiefs, the Coptic Church, the people (only the Amharras or also the population of the outlying parts conquered by Emperor Menelik)?

What were the factors only second in importance to the belligerents? The States who remained outside the conflict.

The League members followed the lead of Great Britain. Instead of asking the by now familiar question, What is Great Britain? we should like to draw attention to another set of questions which are relevant. What induced Great Britain to take such an energetic line regarding this specific case of aggression? Was the British attitude based on respect for the League Covenant and the pledged word of this country? Was it the result of national interests, of election pledges or of the pressure of public opinion? If the latter, we find that a new factor has emerged which should be taken into consideration.¹

But Great Britain was only one among more than fifty States who were actively engaged in the sanctionist experiment. France's attitude was perhaps more decisive than that of any other single country in preventing the application of the oil sanction at a time when this sanction could have been effective. Why was the Government of that country so reluctant to apply Article 16 which previously had seemed to a good many of its French interpreters to present the essence of the Covenant? Can this attitude be explained by a cynical disregard of treaty obligations, by a secret bargain between Laval and Mussolini, by Laval's fear of an annexation of Austria by Hitler or of a major conflagration in the West if France had been involved in earnest in a conflict with Italy? Why did the other League members, particularly Great Britain, submit so meekly to this French obstruction? Had they not realised before that the application of economic sanctions might

¹ Compare, below, Chapter 10.

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lead to the necessity of applying military sanctions and ultimately to resort to war? If certain sections of the member States foresaw such potentialities and were not prepared to take such a strong line, why did they not say so in time instead of becoming guilty of raising hopes and then disillusioning public opinion all over the world? Yet, strangest thing of all, why did a non-member State like the U.S.A., which had refused to join the League, take such an embarrassingly helpful attitude? Why did it pass neutrality legislation which, for all practical purposes, supplemented the action taken by the members of the League?¹ Why did they let it be understood that they would not oppose the legality of a League boycott established against Italy, and that they were prepared to exercise unofficial pressure upon the American oil companies not to endanger a League oil embargo by supplies of oil to Italy?² Or, to introduce another type of non-member State, Germany, why did Germany keep absolutely neutral in a conflict between the hated League and a country based on so similar ideological principles?³

Was the attitude of those other social forces which we have enumerated before of any significance in this conflict? It is true that the shareholders of the Suez Canal Company profited greatly from the continuous stream of transports, both of men and material, flowing from Italy to the Italian colonies in East Africa, but it would be hard to prove that this was the reason, or at least one of the main reasons, why League action was postponed again and again after the original Abyssinian application to the League in January, 1935.

For a few days before the war actually started, it looked as if the advocates of an economic interpretation of this conflict could at least produce some shreds of evidence. Abyssinia granted to Mr. Rickett far-reaching concessions in favour of the African Exploration and Development Corporation.⁴ Yet the supremacy of politics asserted itself without delay. The British Government advised the Abyssinian Government 'to withhold the concession',⁵ and the U.S.A. State Department expressed the view 'that the granting of this concession has been a cause of great embarrassment, not only to this Government, but to others who are making strenuous and sincere efforts for the preservation of peace'.⁶ Thereupon the Standard Vacuum Oil Company, which was the party really interested in this concession,

¹ Compare the *New Commonwealth Quarterly*, Vol. I, 1935, p. 243.

² See *ibid.*, p. 336.

³ See *ibid.*, p. 246.

⁴ *ibid.*, pp. 232 et seq.

⁵ *The Times*, September 2nd, 1935.

⁶ *ibid.*, September 4th, 1935.

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informed the State Department that they would withdraw from it.

Churches, political parties and peace organizations influenced public opinion and exhorted their followers to take sides in this issue.¹ As long as the governments appeared to pursue the sanctionist policy, it looked as if they had taken this line, obeying an irresistible impulse from below. When they decided to call off the battle and to discontinue what appeared to them in summer, 1936, as the 'midsummer of madness',² the whole front line of public opinion was shattered, and a bewildered public remained staggered without understanding of those principles of power politics which had guided their governments.

In vain, the representatives of the Church had propagated: 'The Christian citizen will, as it seems to me, demand of his representatives that they should do their utmost to make the Covenant of the League effective.'³ Yet the position of the Church was no longer what it had been in the Middle Ages: it had proved inferior to the State on the plane of power, and therefore had in modern society to resign itself to a position which can only be qualified as subordinate compared with that of the Roman Catholic Church at the time of its conflicts with the German emperors over the question of investiture.

It is hard to find another example in recent history which proves so convincingly the minor importance of all other forces in the international society, compared with the importance of those privileged groups which we shall analyse further when we deal in a future chapter with the nation State.

Nevertheless, it would be equally wrong to fall into the opposite extreme and to assume that the nation States move in the international society as in a vacuum. For a good many of these sectional interests which can claim a weight of their own, such as big economic concerns, banks, news monopolies, the armament industry, exercise influence over governments by the control of political key positions (subventions to party headquarters, personal and social contacts⁴ with members of the legislature and administration) and over weaker social

¹ Compare the broadcast by the Archbishop of York in the National Programme on September 1st, 1935, on 'The Christian and the World Situation', London, 1935.

² The Rt. Hon. Neville Chamberlain in the 1900 Club on June 10th, 1936, reported in *The Times*, June 11th, 1936.

³ *I.e.* in note 1 above, pp. 9-10. Another symptom of this change in the hierarchy of loyalties is the attitude of States towards conscientious objection. The liberal policy adopted in this country is in contradiction even with the attitude which the U.S.A. take regarding this question. Compare the cases arising out of petitions for naturalization, *U.S. v. Schwimmer*, *Macintosh v. U.S.* and *Bland v. U.S.*, in *Annual Digest*, 1929-30, Nos. 136-8.

⁴ See E. Staley, *War and the Private Investor*, New York, 1935.

forces, such as public opinion, by information, colouring and suppression of news.

A few examples may illustrate this contention. Lord McGowan expressed himself as follows on the interplay between politics and economics: 'Day by day questions crop up demanding early action. They touch affairs at home and abroad. Almost any commercial or economic event may affect our interests or our policy; nor can we in these days neglect political matters, for they are so intertwined with business relations that we have learned to regard them as the forerunners of industrial consequences.'¹

This diagnosis is confirmed by van Zeeland, the former Belgian Prime Minister and Professor of Economics: 'It is virtually impossible to find an economic problem which is not complicated by political aspects, and the political questions to which economic preoccupations are not directly or indirectly linked are rare indeed. In point of fact, we find ourselves usually confronted by a complex of difficulties, composed of political, economic and social elements mingled inextricably together.'²

If we turn back to the pre-1914 period, outstanding examples of the interrelationship between political and economic expansion are the Bagdad Railway and the Mannesmann concessions in Morocco. The motive for the Sultan's approach to the Deutsche Bank was to break the French control over the Ottoman Bank. Whatever the reasons were which induced Georg von Siemens to apply for the concession, and it is very likely that in his view political and economic expansion could not be separated,³ the German bankers applied for an extension of the concession originally granted to them and offered to them by the Sultan in 1891 only on the initiative of the German Imperial Government.⁴

The Mannesmann concessions offer evidence of the superior position of governments, if and when they do not want to use such economic interests for political purposes. In spite of internal opposition which strong vested interests can always mobilize in their favour in a society which does not subject them to strict control, the German Imperial Government found it easy to deal with these industrialists. It even suggested to them, though without success, to come to

¹ *The Times*, April 22nd, 1938.

² Paul van Zeeland, *Economics or Politics?*, Cambridge, 1939, p. 16.

³ H. Friedjung, *Das Zeitalter des Imperialismus 1884-1914*, Berlin, 1919, Vol. I, p. 250.

⁴ William L. Langer, *The Diplomacy of Imperialism*, New York, 1935, Vol. II, pp. 631 *et seq.*; Staley, *l.c.*, p. 149.

an understanding with its rival group, l'Union des Mines, and to exploit the ore mines jointly with that company. Agreement between the two companies was only achieved after the Morocco crisis of 1911 and the signature of the Franco-German Convention of November 4th, 1911.¹ Pichon, the French Foreign Minister, put this rather detached attitude in the Chambre des Députés into the following blunt words: '*Il n'est pas douteux que la diplomatie ne peut être à la remorque de tous les financiers qui hasardent leur capitaux dans des opérations plus ou moins aventureuses.*'²

To quote a similar reaction from the post-1919 period, we refer to the speech of the British Prime Minister in which, in connection with the war in Spain, he asked 'whether it is really claimed that this country should go to war or take action which might conceivably involve us in war, in order to give protection to people like this who have gone, for purposes of making profits, in this risky trade, in spite of the warnings of His Majesty's Government'.³

Thus it appears that capitalists abroad may be the tool of diplomacy; in some cases they may also succeed in making the foreign policy of States subservient to their own interests, but it would be a gross exaggeration to assume that in the average case the issue of peace or war lies in their hands.⁴

This does not, however, imply that the economic aspect of international affairs is unimportant. As the Permanent Court of International Justice pointed out in its examination of Austria's independence, 'that independence is violated, as soon as there is any violation thereof, either in the economic, political, or any other field, these different aspects of independence being in practice one and indivisible'.⁵

The fact that the economic sphere has become of an increasing significance for the *homo politicus* means, on the contrary, that the former separation between politics and economics, the nineteenth-century separation between the functions of the State and the individual, can no longer be maintained.⁶ Therefore, the law of increasing State activity, as this process has been aptly described by Harms,⁷

¹ Eugene N. Andersen, *The First Moroccan Crisis, 1904-1906*, Chicago, 1930, Friedjung, *l.c.*, p. 20, and E. Staley, *l.c.*, p. 193.

² *Journal Officiel*, 8 juin, 1907, *Débats Parlementaires, Chambres des Députés*, 1,231.

³ *Hansard*, House of Commons, June 23rd, 1938, Vol. 1,354.

⁴ Staley, *l.c.*, p. 55.

⁵ In the *Anschluss* case, Series A/B.41, p. 45.

⁶ Compare E. H. Carr, *The Twenty Years' Crisis*, London, 1939, pp. 145 *et seq.*

⁷ 'Weltwirtschaft und Weltwirtschaftsrecht', in Strupp's *Wörterbuch des Völkerrechts und der*

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leads more and more to State control over industrial, financial and commercial fields formerly reserved for private enterprise. The control of production, means of transport, finance, banking and export has increased even in States theoretically still based on the capitalist system, and, even in peacetime, to such an extent that it becomes rather hard to distinguish between 'proper' and 'improper' relations between the governmental and these other circles.

It is worth while to pause here for a moment, and to ask why there is so much concern about the influence of industrial and financial groups on State affairs in general and international relations in particular. It seems that this attitude can be traced back to two main considerations. In the first place, there is the widespread feeling, which vested interests would probably hasten to profess to share, that it is the function of the State to serve the common good, and not the interests of the few which might not always coincide with the general interest. Awareness of such possibilities of abuse has been sharpened by the Marxist interpretation of the functions of the State. As, however, the U.S. Senate inquiry into the reasons for the entry of the U.S.A. into the last World War proves,¹ it would be unjustifiable to assume that the fear of such abuses is limited to Marxist quarters. Second, as is indicated by the widespread uneasiness over the influence of the private armament industries on foreign policy² in countries in which they are not nationalized or subject to strict government control, such interference for selfish ends is particularly resented in the sphere of inter-State relations; for, in the present state of international organization, every citizen, including women and children, may be asked at a moment's notice to make the supreme sacrifice for his country, and he dislikes to think that such a situation may have been caused or precipitated by groups who regard war merely as a calculable event within the provinces of their financial speculations.

In view of the present closeness of politics and economics, it is hard to give an answer how to effect such a separation so that vested interests serve the State without being able to abuse it for their own ends. It appears to be an over-simplification to put the question as

Diplomatie, Berlin, 1929, Vol. III, p. 498; F. E. Lawley, *Collective Economy*, London, 1938; Emile Girard, *La Crise de la démocratie et le renforcement du pouvoir exécutif*, Paris, 1938; v. Mises, Röpke, Whitton and Heilperin in *The World Crisis*, London, 1938, pp. 243 *et seq.*; W. Friedmann in *The British Yearbook of International Law*, London, 1938, pp. 118 *et seq.*

¹ Nye Committee, Senate Report 944, Part 5.

² The *Report of the Royal Commission on the Private Manufacture of and Trading in Arms* (Cmd. 5,292), the statement of the Prime Minister relating to it (Cmd. 5,451) and Philip Noel-Baker, *The Private Manufacture of Arms*, London, 1936.

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an issue between capitalism and socialism. For even were the State machinery wholly in the hands of the proletariat, this would only mean that the vested interests had been distributed more equally, not that they had disappeared. It might even be argued that such a situation would increase the causes of international friction, as now literally every citizen would be directly affected by any gains made or losses suffered by his socialist fatherland.¹ This simple consideration shows that the clue of this riddle lies in another direction. As Sir Arthur Salter has rightly emphasized,² the problem is not limited to a question of *laissez-faire* or planning in the internal sphere; it is insolubly connected with the wider issue whether capitalist and socialist States can be subjected to a sufficient measure of world government.

Though it seems hard to contest the primacy of policy over the other forces at work in the international society, the political control of these forces, at least in democratic countries and in peacetime, is not so strong as not to allow them a radius of their own, in which they can display their own influence and acquire a considerable amount of nuisance value.

To choose an example, let us select newspapers, the monopolies of sensationalism, as Lasswell³ calls them. The interest of newspapers in these questions is closely connected with their main problem – circulation. For nothing appears to be so likely to increase sales as news of international tension and war.⁴ Yet, again, the fact that newspapers, even against their will, take part in the shaping of public opinion by the selection, suppression and presentation of news, leads to a relationship between politics and the newspaper world which is not very different from the interplay between political and economic forces.

Bismarck's view, expressed in a letter to Minister von Manteuffel, was to give newspapers more scope in domestic affairs than they had at that time in Prussia, but 'to insist upon it with unrelentless severity that the foreign policy of the government will not only not be attacked by any Prussian newspaper, but will be strongly supported, and that any newspaper which contravenes by one inch, should be suppressed without any scruples'.⁵

¹ Laski's dictum, 'The nation State will act towards other nation States as it acts towards its own citizens' (*A Grammar of Politics*, London, 1928, p. 238), makes revealing reading, if applied to the aggression of the U.S.S.R. against Finland.

² In his introduction to Staley, *l.c.*, p. xi.

³ Harold D. Lasswell, *World Politics and Personal Insecurity*, New York, 1935, pp. 204 *et seq.*

⁴ Kennedy Jones, *Fleet Street and Downing Street*, London, 1920, p. 108, and Lasswell, *l.c.*, pp. 204–5.

⁵ Letter of December 8th/9th, 1854, *Gesammelte Werke*, Vol. I, p. 516.

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Totalitarian and authoritarian States have learnt this lesson to the full and insist, not only on the censorship of news, but on a degree of guidance of the Press which transforms newspapers into executive departments.¹ Yet even democratic countries had to adapt their machinery for the contact between government and the Press in order not to be left hopelessly behind in the struggle *between* the States in the sphere of propaganda and public opinion. One example may show the consequences of a policy of *laissez-faire* in this sphere. In 1897, an anonymous writer published in the *Saturday Review* an article which contained the following sentences: 'If Germany were extinguished to-morrow, the day after to-morrow there is not an Englishman in the world who would not be the victor. Nations have fought for years over a city or a right of succession; must they not fight for 250,000,000 pounds of yearly commerce?'² As has been repeatedly explained since, this review was at that time 'a paper which aimed at amusing the public by ferocious vituperation of something or other'.³ Nevertheless, the quotation did its work. It formed one of the most popular arguments in favour of the encirclement propaganda before, and during, the first World War, and was taken up again by Hitler in the post-Munich era when the second edition of the encirclement myth was issued.

Another reference may indicate how newspapers can abuse their freedom of reporting by 'weighting' news in the interest of the policy advocated by them. A London daily paper, hostile to the League of Nations and to Great Britain's active collaboration in it, summarized in 1935 a Reuter's message from South Africa on a speech by General Smuts regarding Italy's aggression in Abyssinia. General Smuts expressed in this speech his full approval of Great Britain's leadership in the collective action. The newspaper account in question was headed: 'General Smuts and the League.' It was followed by the sub-heading, 'Scrap it if it menaces peace', and all the passages referring to the League in positive terms were suppressed.⁴

None of the social forces in the international or in any other society can claim to be a *rocher de bronze* which remains unaffected by the inter-play with the other elements, which all together give such an

¹ Compare Robert W. Desmond, 'The Press in World Affairs', in *Contemporary World Affairs*, New York, 1939, p. 519.

² *Saturday Review*, September 11th, 1897.

³ E. Bevan in a letter to the Editor of *The Times*, April 29th, 1939.

⁴ See Maurice Spencer's letter to the Editor of the *New Statesman*, November 2nd, 1935, p. 633, and Robert W. Desmond, *The Press and World Affairs*, London, 1937, p. 371.

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eminently dynamic character to the realm of international relations. Even the limited examples which we have put forward show, however, that there is a definite hierarchy between them, and that a particularly privileged position has been reserved in the international society to the nation State.

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CHAPTER 3

THE NATION STATE

THE modern State has acquired an importance within society which it could claim neither in antiquity nor in the Middle Ages. How has the modern State achieved this dominating position both on the internal and on the international plane?

It appears that the modern State forms a more formidable conglomerate of power than any of its predecessors in earlier periods of history. The feudal State was built on a hierarchy of social relations. This meant, in practice, that the more remote a grade was from the base of the pyramid, the more it was in danger of losing actual control and power over the lower grades of the feudal system. With the development of trade in the twelfth and thirteenth centuries, when society had progressed sufficiently to outgrow the stage of mere reproduction and to proceed to an economic system, in which large-scale accumulation of capital became possible, a new class emerged – the merchant. Since towns were the principal markets, this class was the born town-dweller, and by their alliance with the emperors and kings they soon acquired corporate existence and jealously guarded privileges.¹ These close associations between kings and merchants provided both with essentials which each of them lacked so long as they were isolated. The kings were short of money which they required, apart from private reasons of their own, in order to tame their overmighty subjects, the feudal lords, and to maintain their mercenary troops, which made them independent of the feudal levies, and to buy muskets and guns, the super-weapons of that age which gave them further superiority over their feudal opponents.²

¹ Curtis, *l.c.*, Vols. I and II, *passim*; Max Weber, *Grundriss, l.c.*, pp. 513 *et seq.*

² The attitude of the Chevalier Bayard, described by contemporary soldiers as *sans peur et sans reproche*, reflects the reaction of that doomed class against what they felt would prove in the long run to be a method of warfare superior to their own: 'To captured knights and even bowmen he was the soul of courtesy, but musketeers or other users of gunpowder who fell into his hands were invariably put to death' (J. B. S. Haldane, *Callinicus, A Defence of Chemical Warfare*, London, 1925, pp. 28 *et seq.*).

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Still more did the merchants need the support of a strong authority which assisted them against the arbitrary interference of the feudal lords and which could guarantee the further indispensable conditions of modern capitalism: a highly developed system of communications (roads, canals and postal services) for the movement of goods, information and money, and a wide internal market not limited by duties and tolls levied at every corner.¹

This alliance between the royal power and the merchant class forms the social background of the absolute State, which is strong enough to subdue both the feudal rivals of the king and the Church to the discretion of the absolute ruler. Yet the arrogant assertion, '*L'État c'est moi*', remained true only for a limited period in so far as this motto was to be applied to any crowned head. The development of self-government in England, the renunciation of allegiance to the British Crown on the part of the American Colonies and the French Revolution soon reduced this dictum to its proper proportions.² The masses had become conscious of themselves and of their political power. They did not, however, conceive the modern State as 'nothing more than a committee for the administration of the consolidated affairs of the bourgeois class as a whole'.³ On the contrary, they developed a national consciousness and identified State and nationhood. '*L'État c'est nous*' signals the birth of the nation State.

The union between State and nation has given still greater impetus to the State than has its alliance with rising capitalism. The phenomenon of the nation State has become the dominant factor in international affairs. It is true that there are multi-national States, and Lord Acton may be right in thinking 'that those States are substantially the most perfect which, like the British and Austrian Empires, include various distinct nationalities without oppressing them'.⁴ In the first place, keeping in mind the treatment accorded in the Austrian-Hungarian Empire to Czechs and Slovaks, it is doubtful whether the Double Monarchy merits such positive judgment. Second, its subsequent fate seems to have proved that it had not the necessary cohesion to stand the temperature of continental nationalism of the twentieth-century brand. The British Empire and the U.S.A. have so far

¹ Bertrand Russell, *Power*, London, 1938, pp. 79 *et seq.*; Alfred Weber, *Kulturgeschichte als Kultursoziologie*, Leyden, 1935, pp. 333 *et seq.*

² Curtis, *l.c.*, Vol. II, pp. 175 *et seq.*

³ Karl Marx and Friedrich Engels, *Manifesto of the Communist Party*, London, 1929, p. 5.

⁴ Lord Acton, 'Essay on Nationality' in *The History of Freedom and Other Essays*, London, 1919, p. 298.

avoided the issue by a *de facto* predominance of the white and Anglo-Saxon element, and the famous case of Switzerland stands in a category of its own. For, apart from the special reasons in the European power constellations of the past which made Swiss independence and federalism possible, that country has developed the common consciousness of Swiss nationality which surpasses the frontiers of cantons, races and languages.¹

Therefore, apart from exceptional cases in which a multi-national State may achieve a degree of strength equal to that of a nationally homogeneous State, it appears that the latter achieves the optimum of cohesion which has made the nation State such a formidable force in the international society.

If we do not ask which is the most perfect State, but which is the strongest State, Mill's conception 'that the boundaries of government should coincide in the main with those of nationalities'² has provided the solution. If this is so, then it is not so much because, as Mill imagined, this is a necessary condition of free institutions, as because uniformly welded entities have a power of resistance and expansion in a system of power politics which seems superior to that of a heterogeneous State of comparable strength.³ This seems to be a lesson which can be derived without undue generalization from historical experiences, such as the war in 1866 between Austria-Hungary and Prussia, or from the difficulties facing alliances of various powers, if confronted with resolute opponents such as Frederick II of Prussia or Napoleon, who can draw, up to the point of exhaustion, on the resources of their united and centralized countries.

In attempting to analyse the phenomenon of the nation State, one need not pause long to define the second part of this conception. From a sociological point of view, it will take a long time until Weber's definition of the State as the monopoly of legitimate physical force is surpassed.⁴ Viewed in relation to the nation, it is 'the organized expression of the nation without

¹ See *La Suisse dans l'Europe actuelle*, Zürich, 1939, W. E. Rappard, *L'Individu et l'État dans l'Évolution constitutionnelle de la Suisse*, Zürich, 1939, and Keeton-Schwarzenberger, 'Federalism and World Order', in *Union*, 1940.

² John Stuart Mill, *Considerations on Representative Government*, London, 1933, p. 384. See also A. A. W. Ramsay, *Idealism and Foreign Policy. A Study of the Relations of Great Britain with Germany and France, 1860-1878*, London, 1925, p. 18.

³ From this and other points of view, Hitler strongly criticizes the pre-1914 alliance between Imperial Germany and the Austrian-Hungarian Monarchy, which he classifies as the 'corpse of a State', *Mein Kampf*, Munich, 1930, p. 141.

⁴ Max Weber, *Grundriss, I.c.*, p. 615. See also Sir Alfred Zimmern, *Nationality and Government*, London, 1918, p. 51, and Franz Oppenheimer, *Der Staat*, Jena, 1926, p. 21.

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which the nation can have only a passive and ignoble existence'.¹

This brings us to the crucial question: What is a nation? This question forms the title of Renan's famous essay on this subject. After considering various factors such as race, language, religion, community of interests and geography, he arrives at the conclusion that 'a nation is a soul, a spiritual principle. Two things which are really only one, go to make up this soul or spiritual principle. One of these things lies in the past, the other in the present. The one is the possession in common of a rich heritage of memories; and the other is actual agreement, desire to live together, and the will to continue to make the most of the joint inheritance. . . . The existence of a nation is a daily plebiscite, just as that of the individual is a continual affirmation of life.'²

This subjective character of nationhood is also stressed by John Stuart Mill, who emphasizes the element of common sympathies 'which do not exist between them and any others – which make them co-operate with each other more willingly than with other people'.³ For this reason, objective criteria such as size, central organization, relation to territory, common language, racial origin, literature or civilization, which may apply in some cases, are sadly absent in others in which we have no doubt that we have a nation before us. As these empirical qualities do not form decisive elements in this phenomenon, any definition of the term 'nation' which does not lay the emphasis in each case on that main factor of integration and solidarity which may vary from one case to the other must remain an empty abstraction. In Sir Alfred Zimmern's words, 'what is subjective, cannot be defined in strict scientific terms; it can only be interpreted'.⁴ For this reason, the German-Polish Convention of May 15th, 1922, concerning Upper Silesia, wisely bestowed upon every national the right freely to declare, according to his conscience and on his personal responsibility, that he did or did not belong to a racial, linguistic or religious minority.⁵ The Permanent Court of International Justice, while in form making concessions to the Polish contention that minorities ought to be defined in accordance with objective criteria (race, language and religion), in fact decided in favour of the opposite view by its emphasis on the point that the choice made by parents in accordance with the

¹ C. A. Macartney, *National States and National Minorities*, London, 1934, p. 102.

² E. Renan, *What is a Nation?*, London, 1896, pp. 80–1.

³ *I.c.*, p. 380. See also Sir Alfred Zimmern, *I.c.* in note 4, p. 56, above, pp. 51–3, and Max Weber, *Grundriss, I.c.*, pp. 627 *et seq.*

⁴ Sir Alfred Zimmern, *I.c.*, p. 51.

⁵ Articles 74, 106 and 131.

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Convention could not be subject to any 'verification, dispute, pressure or hindrance whatever on the part of the authorities'.¹

The common consciousness of such a community and the faith in it is the essence of nationalism. 'When each of you has this faith and is ready to seal it with his own blood, then alone will you have a country, not before'. These words of Mazzini² express the intensity and fanaticism which is inseparably connected with this mentality. Now it becomes evident why the nation State is such a vital force compared with other associations in the international society. To use Lasswell's telling terminology, in the case of the ideal nation State, i.e. in the case in which we have the most typical and purest realization of this phenomenon, the organization area of the State and the sentiment area of the nation coincide.³ The State becomes the framework and institutional guarantee of the nation and thus partakes of that *fluidum* of sympathy and antagonism which is characteristic of exclusive and not merely introspective communities.

As nations seem to integrate best against some other groups which really or allegedly appear to be opposed to such a development, nationalism is coloured to a certain extent by the concrete antagonism in which it is, or has been, involved. Thus German nationalism, as fostered by Bismarck, had a strongly anti-French flavour, as he had chosen to achieve the unification of Germany by the medium of a war between these two countries. The Bavarian patriotism during the Weimar Republic was strongly separatist and anti-Red, as at least, according to the views current in these circles, the Reich and Prussia were governed by socialists and trade unions. Nationalism in Soviet Russia is strongly anti-capitalist and in China anti-imperialist. The virulent nationalism of majorities is the most interesting phenomenon, for they have to magnify the minorities which they single out, as in the case of the Jews or Catholics in Nazi Germany, in order to avoid ridicule and the reactions of primitive decency, which would otherwise counteract the intended process of integration. Whatever group provides the scapegoat against which this counter-identification takes place, it fulfils the apparently indispensable function of giving to the group imbued or to be imbued with nationalist sentiment the chance of self-assertion.⁴ The more a nation moves away from its formative period, the more it seems to be able to acquire a degree of self-

¹ Judgment on Rights of Minorities in Upper Silesia, April 26th, 1928 (A 15, p. 46).

² G. Mazzini, *To the Young Men of Italy*, 1859.

³ Lasswell, *l.c.*, p. 10.

⁴ M. Weber, *Grundriss*, *l.c.*, pp. 627 *et seq.*; Lasswell, *l.c.*, p. 37.

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confidence which invariably appears to be absent in the early stages of nationhood.

The explanation that patriotism 'is built in part from the gregarious instinct of man, and in part from the rational desire for self-government',¹ probably does not take sufficiently into account two other components. In the first place, there is the economic aspect which plays such an important role in the anti-Semitic nationalism in East and South Eastern Europe or in the anti-Greek or anti-Chinese attitude amongst those populations in the Near and Far East where the Levantine or Chinese merchants fulfil the social and economic functions of their European counterpart.² Another important feature is the psychological one. Social psychiatry has provided various interpretations. It is a well-known experience that a high degree of sympathy in one direction may induce an individual to become particularly aggressive against third persons, especially if such an attitude can be interpreted as an indication of the degree of attachment and of the willingness to bring sacrifices to the object of one's sympathy. Similarly, a personal inferiority complex may be compensated by the consciousness of belonging to a powerful group or a group which is strong enough to force others to regard it as superior. It has also been said that our civilized society suppresses aggressive instincts to such an extent, and offers so few productive and constructive outlets, that nationalism is one of the few legitimate means of expressing these permanent features in human character. Finally, nationalism has been interpreted as 'a frightened response of the species-making, segregating impulse against the resistless, imperious demand of the ever-widening evolutionary process towards internationalism'.³ Only an interpretation which does not lose sight of these psychiatric features can comprehend otherwise inexplicable nationalist assertions, based on strange conceptions of centrism: China the Middle Empire, Germany the heart of Europe, Rome the axis of three continents, or ideas such as those which are connected with national missions: the conception of the chosen people which has equally appealed to a

¹ Laski, *l.c.*, p. 232.

² Karl Marx's essay on this topic is still unsurpassed ('On the Jewish Question', in *Selected Essays*, London, 1926). See also Franz Oppenheimer, 'Der Antisemitismus im Lichte der Sociologie', in *Der Morgen*, 1925; H. G. Wells' stimulating interpretation in *The Fate of Homo Sapiens*, London, 1939, and in *A Republican Radical in Search of Hot Water*, London, 1939, and Jacques Maritain, *Anti-Semitism*, London, 1939.

³ Coatman, J., *Magna Britannia*, London, 1936, p. 92. See also Lasswell, *l.c.*, *passim*, and H. Zbinden, 'Zur psychologischen Grundlegung des Friedens', in the *New Commonwealth Quarterly*, Vol. IV (1938), and 'Psychological Conditions of a New Commonwealth', *ibid.*, Vol. V (1939).

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good many Jews as to their Nazi persecutors, or the idea that nations are the outposts of Western civilization against Eastern barbarism. In Paris, even before the Third Empire, the dividing line seemed to be the Rhine, in Berlin the Polish frontier, and in Warsaw the boundary of the U.S.S.R.

Compared with these deeper strata of the unconscious, the knowledge that nation States would have been impossible without the technical revolution of the nineteenth century with its improvement in means of communications and its tendency to turn out goods and serial types contributes to an understanding of merely those features which are rather subordinate.¹ For nationalism is in essence subjective, emotional and subconscious.

The predominant role of nationalism becomes perhaps most obvious if we compare it with other social forces. Whenever there has been a clash between nationalism and internationalism, it appears that the latter has seemed to fade into the background. So far internationalism has developed mainly the faculties of rationalist criticism, but has not proved strong enough to create a myth of its own, nor to rally fanatical loyalties around its banner. It may be that internationalism can never achieve this goal or, according to others, never sink to so low a level. From the standpoint of success and achievement, this would, however, be tantamount to a death penalty. For in a century of masses reason alone does not seem to be able to carry movements to success, and they do not seem to listen to the successors of the eighteenth-century encyclopaedism and rationalism.

The ideal of the class and class warfare has suffered its most extreme failures when it clashed with nationalism. The breakdown of the Second International in 1914 is evidence of it; Stalin's conception of the U.S.S.R. as the socialist Fatherland has confirmed this experience.² Even Christianity does not appear to have proved superior in its conflict with extreme nationalism. German Protestantism, apart from exceptions which only confirm the general rule, immediately sought to come to terms when confronted with Nazi totalitarianism. The Catholic Church, which attempted at periods to take a stiffer line regarding these developments, also concluded the Lateran Agreements with Italian fascism, condoned and blessed its

¹ Curtis, *l.c.*, (Vol. II), p. 199, and Bonn, *l.c.*, pp. 107-8.

² Compare Karl Radek's revealing article in *Foreign Affairs*, New York, 1932, p. 557, and the text of the oath taken by the Red Army in 1939, *The Times*, February 24th, 1939.

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action in Abyssinia and Spain, and concluded a concordat with Nazi Germany.

Yet still more illustrative is the fate of a small minority which could not appeal to any other solidarity but that of common Christendom, the sufferings of the Assyrians who were to be transferred from Iraq to the territory of a member State of the League. When confronted with the problem of these 30,000 people, the difficulties in the way of a constructive solution appeared practically insuperable to the League members concerned. Lord Hugh Cecil, in commenting on this incident, remarks 'how enormously feebler Christian sentiment is than nationalist sentiment'.¹ The overmighty strength of nationalism, particularly if combined with the power of the modern State, raises the issue whether its existence can be reconciled with any system of international or supra-national order.

At this stage, we must be content to outline the conditions which will determine whether our time can overcome the antinomy between order in a nationless world and anarchy among sovereign nations.² For, 'however debased and distorted its present manifestations may be, nationalism is an organic and not necessarily evil development of the political life of man'.³ Even if Europeans and Americans who have drunk too deeply from this dangerous cup might be inclined to disagree with this opinion, those countries now just passing through those stages through which the Western people have gone during past centuries will feel that they cannot overlap this essential and formative stage. In the words of Sun Yat-Sen, 'we, the wronged races, must first recover our position of national freedom and equality before we are fit to discuss cosmopolitanism. We must understand that cosmopolitanism grows out of nationalism; if we want to extend cosmopolitanism, we must first establish strongly our own nationalism'.⁴ If nationalism is to fulfil really positive functions from the standpoint of the international community as a whole, nationalism would have to undergo a process of rather far-reaching self-limitations: in the first place, nationalists would have to realize that the nation, though a reality and a high value, only represents a relative value. Secondly, it may be easy to perceive differences between nations, but so far nobody has succeeded in establishing a just hierarchy between them.⁵

¹ Lord Hugh Cecil in a letter to the Editor of *The Times*, October 18th, 1937.

² Compare H. Foster Anderson, 'Sovereign Rights', *Hibbert Journal*, 1939, p. 25.

³ M. Channing-Pearce, 'Federalism and Nationalism', in *Union*, 1940, p. 52.

⁴ Sun Yat-Sen, *The Three Principles of the Peoples*, New York, 1924.

⁵ Compare E. Barker, *The Citizen's Choice*, Cambridge, 1938, pp. 177-8.

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Judgments based, in a matter of course way, on our own civilization are only one of the many hypocrisies of which the West has become guilty, particularly regarding the Far East.

Such humility on the part of movements which excel by self-assertion may be too much to expect. Yet it is hard to see how a society can be changed into a community without a fundamental change in the psychological sphere.¹ The international mind, that indispensable prerequisite of any such development,¹ cannot be created without a limitation and, to a certain extent, a transfer to a wider unit of those loyalties which are to-day essentially connected with the nation. If nationalism is to be preserved in such a world or, as others would call it, in such a Utopian paradise, it must be recast and conceived in a community spirit. Nationhood must be interpreted as a duty towards mankind and not as a right against others, as a social function and not as a privilege, as a co-operative and not as a competitive principle. A German Statesman,² who himself vacillated between rather cynical views on international affairs and very lofty ideas on this topic, has put this community conception of the nation into words which do not lose even if they were mainly inspired by the *genius loci*: 'But there is something which far transcends in importance all material considerations – namely, the souls of the nations themselves. There is just now a mighty stirring of ideas among the nations of the world. We see some that adhere to the principle of self-contained national unity and reject international understanding because they do not wish to see all that has been developed on the basis of nationality superseded by a more general conception of humanity. Now, I hold that no country which belongs to the League of Nations thereby surrenders any of its national individuality. The Divine Architect of the world has not created mankind as a homogeneous whole. He has made the nations of different races. He has given them their mother-tongue as the sanctuary of their soul; he has given them countries with different characteristics as their homes. But it cannot be the purpose of the Divine world-order that men should direct their supreme national energies against one another, thus ever thrusting back the general progress of civilization. He will serve humanity best who, firmly rooted in the faith of his own people, develops his moral and intellectual gifts to the utmost, thus overstepping his own national boundaries,

¹ Nicholas Murray Butler, *The International Mind*, New York, 1932.

² Stresemann in the League Assembly when Germany was admitted as a member, September 10th, 1926, Seventh Plenary Meeting, p. 2.

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and serving the whole world, as has been done by those great men of all nations whose names are writ large in the history of mankind. Thus the ideals of nationality and of humanity may unite on the intellectual plane, and they may similarly unite in pursuit of political ideals, provided that there is the will to make common progress in this field.'

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CHAPTER 4

THE SOVEREIGN STATE

THE phenomenon of national sovereignty is only another aspect of those problems with which we have dealt in previous chapters. The modern State would be inconceivable had not the Christian Commonwealth of the Middle Ages disintegrated, and its claim to supremacy and irresponsibility would be exposed to ridicule were it not for its union with the vital and overriding conception of nationhood.

Against this background, Hobbes' description of the 'great Leviathan' has to be understood: 'This done, the Multitude so united in one Person, is called a *Common-Wealth*, in latin *Civitas*. This is the Generation of that great *Leviathan*, or rather (to speak more reverently) of that *Mortall God*, to which wee owe under the *Immortall God*, our peace and defence. For by this Authoritie, given him by every particular man in the Common-Wealth, he hath the use of so much Power and Strength conferred on him, that by terror thereof, he is inabled to forme the wills of them all, to Peace at home, and mutuall ayd against their enemies abroad. And in him consisteth the Essence of the Common-Wealth; which (to define it,) is *One Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence*. And he that carryeth this Person, is called *Sovereigne*, and said to have *Soveraigne Power*; and every one besides, his *Subject*.'¹

Or, to put this situation in the words of a cautious interpreter of international law in our own time: 'The sovereign State does not acknowledge a central executive authority above itself; it does not recognize a legislation above itself; it owes no obedience to a judge above itself.'²

It is true this supreme *potestas* of the nation State is limited in the international society, by the fact that international law limits the

¹ Hobbes, *Leviathan*, Oxford, 1929, Chap. 17, p. 132.

² H. Lauterpacht, *The Function of Law in the International Community*, Oxford, 1933, p. 166.

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absolute freedom of the State. Yet the development of international law from its originally close association with natural law, towards positivism, and the fact that States have remained in principle their own masters in the fields which are distinguished in the internal life of the State in accordance with Montesquieu's scheme, indicate sufficiently the merely formal character of this limitation.¹ The doctrines of sovereignty which have sprung up in legions since Bodin's *Les Six Livres de la République* (1577) are the theoretical reflection of this social phenomenon and frequently fulfil also an ideological function. The required political and theological arguments were furnished by the reasonings employed during the Middle Ages in the debates which accompanied the struggle between Pope and Emperor for the over-lordship of Christendom. If Dante could claim that the Emperor ruled by divine right, why could the same assertion not be made on behalf of kings and other princes? Edward II, Richard II, Wycliff and John of Paris anticipated during the fourteenth century Bodin's assertion and maintained that they were not subject to Imperial control: '*Regnum Angliæ ab omni subjectione imperii esse liberissimum.*'²

Bodin's conception of sovereignty becomes clear if it is kept in mind that sovereignty was used during his time as a legal technical term in order to describe courts like the *Parlement de Paris* and the *Cour des Aides*, from which there was no appeal to any higher tribunal.³ The obstacles confronting the princes, within their own territories, were of an entirely different calibre and power of resistance, compared with those in the international sphere. Because of its alliance with the commercial class, the monarchical power in England and France was strong enough to subordinate completely the Church and aristocracy.⁴ Therefore, within the territory over which the prince had established his power, sovereignty could justly be described in the Austinian sense: 'If a determinate human superior, not in a habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent.'⁵

¹ Compare, above, Chap. 1 and, below, Chap. 11.

² Lord Bryce, *The Holy Roman Empire*, London, 1913, p. 185.

³ Sir Geoffrey Butler and Simon Maccoby, *The Development of International Law*, London, 1928, p. 7.

⁴ Compare Chap. 3, above, and Russell, *l.c.*, pp. 78 *et seq.*

⁵ John Austin, *Lectures on Jurisprudence*, London, 1869, Vol. I, p. 226; W. Jethro Brown, *The Austinian Theory of Law*, London, 1926, p. 97; and R. A. Eastwood and G. W. Keeton, *The Austinian Theories of Law and Sovereignty*, London, 1929, pp. 62 *et seq.*

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At a later stage in the development of the nation State, the monarch was exchanged as the bearer of sovereignty for a wider group ultimately responsible for the body politic. As it was formulated in the Declaration of the Rights of Man and of Citizens, adopted by the National Assembly of France in 1789: 'The principle of all sovereignty resides in the nation.'¹ These dangers did not, however, make the conception of sovereignty superfluous. One bearer of the national sovereignty was replaced by another. Within his territory, the sovereign could achieve obedience and omnipotence. Externally, the social environment was completely different. With regard to competitors and equals, the maximum that could be achieved was freedom from outside control and independence. The theory of sovereignty as conceived for internal purposes would not fit a world which contains more than *one* overpowering State and in which at least the most powerful of the Leviathans have to acquiesce in living side by side. Therefore, since Grotius, external sovereignty has been defined as 'that power whose acts are not subject to the control of another, so that they may be void by the act of any other human will'.² The positive contents of this conception have been clearly brought out in a decision of the Permanent Court of Arbitration: 'Sovereignty in the relation between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organization of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations.'³

As the whole of the inhabitable world is under the sovereignty of one or the other State, and States are even raising claims regarding the polar regions, in principle the international society is excluded from direct access to any part of the globe. Cases such as the so-called humanitarian interventions on the part of the European powers in Turkey in the pre-1914 period,⁴ or the minority⁵ and mandate

¹ Thomas Paine, *Rights of Man: Being an Answer to Mr. Burke's Attack on the French Revolution*, London, 1937, p. 79.

² Hugo Grotius, *De Jure Belli ac Pacis, Libri Tres*, London, 1925, p. 102.

³ In the case between the Netherlands and the U.S.A. on the sovereignty over the island of Palmas, 1928, XIX, p. 16.

⁴ Compare Hall-Higgins, *A Treatise on International Law*, London, 1924, pp. 341 *et seq.*

⁵ See, below, Chap. 22.

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treaties¹ of the post-1919 period, may be cited as examples, but these and other cases of 'international government'² only amount to exceptions which confirm the general rule. If 'the State has over it no other authority than that of international law',³ the legal status of the subjects of this legal system must logically be one of equality. From this it follows that in law no change in any existing state of affairs in which a State can claim a legal interest can be effected without the consent of the State concerned. Internally, States are free to do what they like as international law grants them this sphere of exclusive domestic jurisdiction. Externally, the law can be changed only subject to their *liberum veto*. The working of such a system depends on either of two conditions being fulfilled. If the international society were a static society where no, or only rare, changes and adaptations were required, it would be conceivable that such an individualism could be reconciled with the requirements of the group as a whole. Even if we admit, as we must as a matter of course, the dynamic character of the international society, the principle of consent and unanimity might be compatible with the maintenance and development of the international society if only its members were reasonable enough to agree to necessary and vital changes. If such response cannot be expected, then phenomena corresponding to revolution and civil war must remain the 'natural' reaction against merely negative attempts to stabilize an incidental *status quo* in a developing and changing society. Change by force is the answer to the lack of willingness or opportunity to adapt the superstructure to the requirements of powerful and unsatisfied social forces.⁴ Now it can be appreciated what is implied when a distinguished international lawyer writes: 'The supreme principle of the community of international law is the protection of the independence and inviolability of the States, the legal persons of this community.'⁵ It is the function of this doctrine of sovereignty to exclude any change in the existing *status quo* save by agreement, and this means that orderly procedure of the type that any community provides for emergencies, such as change by legislative, quasi-legislative or juridical methods, is excluded in the international sphere if a State does not expressly agree

¹ See, below, Chap. 23.

² Compare L. S. Woolf, *International Government*, London, 1916, and C. Eagleton, *International Government*, New York, 1932.

³ Judge Anzilotti in the *Anschluss* case, Advisory Opinion of the Permanent Court of International Justice, September 5th, 1931, Series A/B.41, p. 57.

⁴ Compare, below, Chap. 9.

⁵ V. Bruns, *Der Internationale Richter*, Berlin, p. 9.

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to the contrary. This principle was strongly emphasized by the Permanent Court of International Justice in the *Eastern Carelia* case, when the League Council asked for an advisory opinion regarding the interpretation of the Peace Treaty of Dorpat, signed in 1920 between Finland and Russia. The Court refused to answer this question, giving to Article 17 of the Covenant an interpretation which, far from being in accordance with its function within the system of the Covenant, transforms it into a hall-mark of the conception of national sovereignty. This assertion can best be proved if we first set out the purpose of Article 17 of the Covenant in the words of the Commentary of the British Government. Article 17 'asserts the claim of the League that no State, whether a member of the League or not, has the right to disturb the peace of the world till peaceful methods of settlement have been tried. As in early English law, any act of violence, wherever committed, came to be regarded as a breach of the King's peace, so any and every sudden act of war is henceforward a breach of the peace of the League which will exact due reparation'.¹

Article 17 as understood by the Permanent Court means something very different. It 'only accepts and applies a principle which is a fundamental principle of international law – namely, the principle of the independence of States. It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement'. 'As concerns States not members of the League, the situation is quite different; they are not bound by the Covenant. The submission, therefore, of a dispute between them and a member of the League for solution according to the methods provided for in the Covenant, could take place only by virtue of their consent. Such consent, however, has never been given by Russia'.² It would lead too far to explain here why League practice dropped the principle of relative universality, which inspired the Commentary of the British Government, and why the collective system of Geneva at this point as in so many others left international law where it stood in the pre-1914 period.³ Yet it is just because the Advisory Opinion of the Permanent Court is so wholly imbued with the

¹ *The Covenant of the League of Nations, with a Commentary thereon* (Cmd. 151), London, 1919, p. 17.

² Series B.5, pp. 27–8. A. P. Fachiri, *The Permanent Court of International Justice*, London, 1932, pp. 160 *et seq.*

³ See, below, Chaps. 14 and 22, and the present writer's *The League of Nations and World Order*, London, 1936, pp. 95 *et seq.*

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conception of national sovereignty and independence that we have referred to it as evidence of the functions fulfilled by these notions.

In Hegel's words,¹ apart from the expressly agreed exceptions, there is no *prætor*, supreme arbiter and arbitrator between States. Such a state of affairs presupposes an accord between States which depends on special circumstances and always on the special and sovereign will of States and therefore has only an incidental character. This implies that conflicts which cannot remain unsettled, or regarding which agreement cannot be reached, have to be settled in accordance with other norms. This overriding system is, as we shall have to explain in detail at a later stage,² the rule of force, culminating in the last resort of power politics, war. Again, Hegel remains at least consistent, which distinguishes him so markedly from those who shirk the implications of the conception of national sovereignty. He bluntly states: 'In so far as an agreement cannot be achieved in special cases, the conflict of States can only be decided by war.'³ Thus, the sovereign State fulfils the function of keeping the legal system of the international society within the narrowest limits. It remains an instrument of the Leviathans, social forces and groups, which regulate their relations in accordance with the higher, because overriding, 'law' of force.

The doctrines of sovereignty which attempt to explain and justify this principle fulfil the same function in the world of ideas. It is their purpose to lay an impenetrable smoke screen round the key position in any system of power politics, the position occupied by the sovereign State. Furthermore, not only can these ideologies be used as apologetics for the existing international anarchy, but the fact of the sovereign State and its sublimation into a legal conception can also be employed in order to stereotype this situation. As the writings of Lasson⁴ and Bergbohm⁵ show, the step from 'what is' to 'what must be' and 'what cannot be' is only a small one, and any assimilation of the international society to a community is resisted and declared impossible and undesirable because of the incompatibility of such a development with the idea of the sovereign State. Even relatively innocuous developments, such as the establishment of a permanent international court, can be anathematized on these grounds.⁶

¹ Hegel, *Grundlinien der Philosophie des Rechts*, Leipzig, 1930, § 333, p. 268.

² See, below, Chaps. 7 to 11.

³ *I.c.*, § 334, in note 1, above.

⁴ Adolf Lasson, *Princip und Zukunft des Völkerrechts*, Berlin, 1871, pp. 12 *et seq.*

⁵ Carl Bergbohm, *Staatsverträge und Gesetze als Quellen des Völkerrechts*, Dorpat, 1877.

⁶ *ibid.*, *I.c.*, p. 32.

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Since the first World War, the demands for the establishment of the rule of law in the international society have increased and have become more and more radical and comprehensive. The Permanent Court of International Justice, which would have been regarded by the disciples of Hegel as the *Götterdämmerung* of the sovereign State, appears to our generation as a rather limited, if valuable, experiment which hardly touches the fringes of the problem. The real issue is raised when the question of the pacific settlement of so-called non-justiciable or political disputes comes under discussion.¹ Then, in a more cautious way, yet in words unmistakably akin to the less sophisticated arguments of bygone days, we are assured that 'it may be necessary and beneficial to peace to entrust a tribunal with the legislative function by virtue of an *ad hoc* agreement'.² But 'there are weighty and decisive objections against such powers being conferred in advance within the frame of obligatory arbitration'.³ Although the same author rightly maintains on another occasion that 'the cumulative effect of these three expressions of sovereignty is to bring international law to the vanishing point of law',⁴ he thinks that the mere possibility of such legislative power being conferred on an international tribunal in advance by submission to obligatory *ex aequo et bono* jurisdiction 'must reduce the authority and usefulness of the existing rules of international law'.⁵ Was W. Jethro Brown too hard in his judgment on his colleagues when he said: 'Theories of sovereignty have been more often apologies for a cause than the expression of a disinterested love for truth'?⁶ Or did Judge Georges Kaeckenbeck, the President of the Arbitral Tribunal of Upper Silesia, do injustice to diplomatists when he wrote that they invoked the notion of sovereignty 'more particularly when they had no other argument with which to refute the principles dictated by the interdependence of States'?⁷

During the years of the post-1919 period, when it looked as if the international society was on the way to further integration, judicial organs adapted themselves to these short-lived trends. In the *Wimbledon* case, the Permanent Court of International Justice tried to keep pace with this development by using a rather formalistic argument:

¹ Compare, below, Chaps. 15 and 16.

² H. Lauterpacht, *The Function of Law in the International Community*, Oxford, 1933, p. 328.

³ *ibid.* ⁴ *I.e.* in note 2, p. 65, above.

⁵ *ibid.*, p. 328.

⁶ W. Jethro Brown, *l.c.*, p. 272.

⁷ 'The Arbitral Tribunal of Upper Silesia', in *The World Crisis* (by the Professors of the Graduate Institute of International Studies, Geneva), London, 1938, p. 235.

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'The Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty.'¹ Similarly, the German *Staatsgerichtshof*, when dealing with the relations between several German States, an association 'closer than the international community of nations', observed: 'The recent development of international law has gone in the direction of restricting the territorial sovereignty of individual States in consequence of their forming part of the family of nations.'² In retrospect, it would probably be unrealistic to accept the assumption on which the *Staatsgerichtshof* based its interpretation of current tendencies. Yet in a different sense there is certainly a far-reaching crisis which affects both the reality and the conception of the sovereign State. In the first place, it is only a formal conception, the value of which entirely depends on the scope and function of the whole legal system of which it forms such an important part. For, in the realm of power politics, the relativity of independence and equality of status is still more blatant than is the corresponding discrepancy between freedom of personality and equality in law and social dependence and inequality within a national community. To this extent, the problem coincides with that of the hierarchy between States and the domination over groups which have not reached the status of the sovereign State. More fundamental, however, than this is the growing consciousness that the sovereign State, though it may be a condition of international law, has become itself one of the main stumbling-blocks in the way of a transformation of the international society, based on power politics, into an international community, founded on the rule of law.³

The reaction to the ideological defence of the sovereign State produced attacks on the same front by their 'utopian'⁴ counterpart. Writers such as Verdross underline that sovereignty is nothing but a

¹ Judgment of August 17th, 1923 (Series A.I, p. 25).

² Decision in the case of the *Donauversickerung* between Württemberg and Prussia *versus* Baden, June 18th, 1927, *Entscheidungen des Reichsgerichts in Zivilsachen*, Vol. 116, annex, pp. 18 *et seq.*, and *Annual Digest*, 1927-8, pp. 130-1.

³ Compare G. W. Keeton, *National Sovereignty and International Order*, London, 1939, particularly pp. 140 *et seq.*

⁴ We use this term here in the sense of Karl Mannheim's *Ideology and Utopia*, London, 1936

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competence of autonomy granted to States by international law.¹ Kelsen eliminates the State as a legal personality and propounds the supremacy of international over municipal law,² and Scelle,³ following in Duguit's⁴ footsteps, defines the State by the criterion that it is a group whose rulers have recognized the supremacy of international law, significantly called by Scelle '*Droit des gens*'. These theories suffer from an element of wishful thinking which anticipates desirable changes in the political reality where the sovereign State is still firmly entrenched, and where the gap between theories and social facts merely produces bewilderment and disillusion. There is, however, an abundance of experiments in divided sovereignty as is proved by the relations between the Federal Government of the U.S.A. and the States of the Union, the experiments of German and Swiss federalism, or the relations between the United Kingdom and the self-governing Dominions since the Statute of Westminster. Facts like these lead without artificiality to doctrines like those of Georg Jellinek by which such departures from the normal type of the sovereign State are interpreted.⁵ It matters little whether one school maintains that sovereignty still resides in the member States or its opposite number arrives at the contrary conclusion. For if functions are divided between the federation and the member States, and the latter take part in the federal government, it is obvious that it is not sovereignty that has disappeared; for sovereignty, conceived as authority, exists as long as men are divided into rulers and ruled, into leaders and led. The only changes are in the forms of social organization and the methods of direction.⁶

This is the meaning of the present crisis of the sovereign State. For the present bearers of sovereignty and governmental authority in the international society appear to be units which seem too narrow and limited adequately to cope with the problems involving the transformation of the international society into an international community. For 'a Commonwealth, without Sovereign Power, is but a word without substance, and cannot stand'.⁷

¹ Alfred von Verdross, *Die Einheit des rechtlichen Weltbildes*, Vienna, 1923, p. 35, and *Das Völkerrecht*, Berlin, 1937, p. 51.

² Hans Kelsen, *Reine Rechtslehre*, Leipzig, 1933, pp. 83, 147 *et seq.*

³ Georges Scelle, *Précis de Droit des Gens*, Paris, 1932 (Vol. I), p. 83.

⁴ Léon Duguit, 'The Law and the State', *Harvard Law Review*, 1917 (Vol. 31), pp. 7, 25.

⁵ See Georg Jellinek's *Die Lehre von den Staatsverbindungen*, Vienna, 1882.

⁶ Compare R. H. S. Crossman, *Government and the Governed*, London, 1939, and H. E. Cohen, *Recent Theories of Sovereignty*.

⁷ Hobbes, *Leviathan*, Oxford, 1949 (Chap. 31), p. 274.

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CHAPTER 5

THE HIERARCHY OF STATES

ONE of the principles which both doctrine and practice of international law regard as a fundamental rule is that of the equality of States. In the *Le Louis* case, Sir Walter Scott derived from 'the perfect equality and entire independence of all distinct States' the principle of the freedom of the sea and emphasized the implications of this principle: 'Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbour; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law which it mainly concerns the peace of mankind, both in their politic and private capacities, to retain inviolate.'¹ The Permanent Court of Arbitration laid down equally categorically in the case of the Norwegian claims against the United States 'that international law and justice are based upon the principle of equality between States'.² Simultaneously we are told that 'the legal conception of independence has nothing to do with the State's subordination to international law or with the numerous and constantly increasing states of *de facto* dependence which characterize the relation of one country to other countries'.³

The antinomy between these equally emphatic pronouncements maps out our problem. In order to understand the legal conception of equality between States, it is perhaps helpful to trace its origins. They go back to a variety of sources. First, the feudal conception of *par in parem non habet imperium* appears to have influenced thinkers on the relations between States.⁴ Secondly, the connection between the

¹ British High Court of Admiralty (1817, 2 Dodson, 210, 243). See also the case of *The Antelope*, decided by the U.S. Supreme Court in 1825 (10 Wheaton Rep. 66, 22).

² Official Reports, XVIII, p. 151. For the opinions of writers, see E. Dickinson, *The Equality of States in International Law*, Cambridge, 1920.

³ Judge Anzilotti in the *Anschluss* case (Permanent Court of International Justice, Series A/B.41, p. 57).

⁴ Julius Goebel, *The Equality of States*, New York, 1923, pp. 30 *et seq.*, and Koellreutter, 'Gerichtbarkeit über ausländische Staaten', in Strupp's *Handwörterbuch des Völkerrechts*, Berlin, 1924, Vol. I, pp. 387 *et seq.*

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Renaissance, the revival of the study of ancient philosophy, and the birth of international law in the environment of natural law, brought with it an awareness of the distinction between the arithmetical and geometrical conception of equality as developed by Greek philosophy.¹ Thirdly, the conception of Roman natural law that all men are equal was applied by writers on international law to States.²

Chequered as its origins, are the justifications which have been put forward for this doctrine. Bluntschli derives it from natural law,³ F. von Martens from the community of international law,⁴ Oppenheim from the legal personality of the State,⁵ Vattel from the analogy between the State and the individual,⁶ and Heffter from the conception of sovereignty.⁷ In substance, this legal equality means equality before the law. As Vattel formulates it, 'a dwarf is as much a man as a giant is; a small republic is no less a sovereign State than the most powerful kingdom. From this equality it necessarily follows that what is lawful or unlawful for one nation is equally lawful or unlawful for every other nation'.⁸

Equality of this kind has a limited meaning only, even in communities in which the rule of law has been established. For it is one thing to have a legal right, and another to be able to exercise it. The problem in such a group is not so much that of natural differences which are highly relevant in a state of anarchy, but that of social inequality which is only a sublimation of more obvious and brutal forms of domination and exploitation. In the international society the hierarchy between the various ranks of States is quite simply one of *de facto* differences between the various powers. Perhaps no other example would be as telling as the grounds on which England was admitted to the conclave which the Council of Constance established for the election of a Pope and which was composed of the cardinals and six deputies elected by the nations recognized in the Council.

¹ Eugen Wohlhaupter, *Æquitas Canonica*, Paderborn, 1931, pp. 20 *et seq.*, and Gustav Radbruch, *Justice and Equity in the International Sphere*, London, 1936, pp. 1 *et seq.*

² Vattel, M. de, *Le Droit des Gens au Principes de la Loi Naturelle*, Washington, 1916, Vol. I, Introduction, § 18, p. 11.

³ Bluntschli, J. K., *Das moderne Völkerrecht der civilisierten Staaten als Rechtsbuch dargestellt*, Nördlingen, 1878, p. 60.

⁴ F. von Martens, *Traité de Droit International*, Paris, 1883-7, Vol. I, p. 380.

⁵ Oppenheim-Lauterpacht, *l.c.*, London, 1937, Vol. I, p. 221. See also Erich Kaufmann, *Das Wesen des Völkerrechts und die 'clausula rebus sic stantibus'*, Tübingen, 1911, p. 195.

⁶ Vattel, *l.c.*

⁷ A. W. Heffter, *Das europäische Völkerrecht der Gegenwart*, Berlin, 1855, p. 48.

⁸ Vattel, *l.c.*, Vol. I, Introduction, § 18. See also for details and other aspects Oppenheim-Lauterpacht, *l.c.*, Vol. I, pp. 220 *et seq.*

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According to the French view, the Italian, German, Spanish peoples and themselves fulfilled this condition. The English claim to rank as a fifth was admitted, for 'the victory which Henry V had won at the battle of Agincourt could not be ignored'.¹ William Penn's plan of 1692 for 'the present and future peace of Europe' provides for a confederation, on the Council of which the members should be represented in accordance with their national income and foreign trade. In accordance with this test he thought that twelve seats ought to be granted to the Holy Roman Empire, ten to France and Spain each, eight to Italy, six to England, four each to Poland, the Netherlands and Sweden, three to Denmark, Portugal and Venice, two to Switzerland and one each to Holstein and Courland. In addition, ten seats were to be reserved for 'the Turks and Moscovites'.²

During the first half of the nineteenth century Europe was dominated by the pentarchy of Austria, France, Great Britain, Prussia and Russia as a matter of fact. '*Les quatres*', as they were called, when the four of them were engaged in their conflict with the France of Napoleon, did not only speak for themselves, but '*au nom de l'Europe ne formant qu'un seul tout*'.³ Turkey was included in the European Concert by the Peace Treaty of Paris, 1856, without, however, any influence on its rather precarious position as the object of the mutual jealousies of the European Greater powers.⁴ Italy was admitted to the circle of the Greater powers by being invited to participate in the London Conference regarding the neutralization of Luxembourg. In spite of the fact that, during the Austrian-Prussian war of 1866, Italy was beaten on land and on sea, this increase in status was the sequence of that country having taken part in that war on the victorious side. Similarly, the elevation of the U.S.A.⁵ and Japan⁶ to this category appears directly connected with the results of their wars with Spain and Russia.

The period from 1919 to 1933 was characterized by the

¹ Curtis, *loc. cit.*, Vol. II, p. 50. See also W. Windelband, *Die auswärtige Politik der Grossmächte in der Neuzeit*, Essen, 1937, pp. 46 *et seq.* This highly significant incident rests on the authority of Mr. Curtis, as in the proceedings of the Council of Constance no reference to this argument can be traced (*Sacrum concilium nova et amplissima collectio*, Venice, 1784, cols. 1,022-31 and 1,058-70).

² William Penn, *An Essay towards the Present and Future Peace of Europe*, Gloucester, 1914, p. 8.

³ J. L. Kunz, 'Europäisches Konzert', in Strupp's *Handwörterbuch*, *loc. cit.*, Vol. I, p. 699.

⁴ See H. A. Smith, *Great Britain and the Law of Nations*, London, 1932, Vol. I, pp. 16-17, and E. Pritsch, 'Turkey', in Strupp's *Handwörterbuch*, *loc. cit.*, Vol. III, pp. 736 *et seq.*

⁵ See Windelband, *loc. cit.*, *passim*, and Curtis, *loc. cit.*, *passim*.

⁶ *ibid.*

predominance of the U.S.A., Great Britain, France, Japan, and Italy, the latter probably only on sufferance. The U.S.S.R. occupied the rather peculiar position of a powerful outsider who had voluntarily isolated herself: the reason was not so much that this country attempted to establish communism within its boundaries, but that its propaganda of communism abroad cut across the basic components of the international society, the nation State, and its distinction between capitalist and socialist States, across those principles on which the hierarchy of nations has so far been based in the international society. Germany was seriously handicapped by her unilateral disarmament under the Peace Treaty, but the rearmament carried out by the Third Empire, and the position of nuisance value which it established for itself, did more to regain her this place than any noble words and gestures on the part of the representatives of the Weimar Republic.¹ This last example, which is certainly not meant to praise Hitler compared with Stresemann or Brüning, is rather revealing as to the principles on which this hierarchy of States is based.

The military aspect is certainly important and Burns would go as far as to define a Great power by reference to its 'predominant military force'.² As Clemenceau reminded the representatives of the smaller States, who protested at the Versailles Peace Conference against their exclusion from major decisions taken at the Conference, the Greater powers represented at the Conference had control over twelve million men under arms.³ Combined with this major factor, economic and financial strength, the size of territory, the possession of colonies and the number of population are important. Yet, divorced from each other, each single factor seems to be of minor significance in itself. China has proved this regarding size of territory and population, Belgium and the Netherlands, in so far as wealth and colonial possessions are concerned, and countries like Japan, Italy and Germany have furnished the proof in the opposite direction. The rulers of these countries have made their States the 'embodied will to power and government' and they educate their people towards 'the acceptance of the risks which combat implies'.⁴

Thus it appears that a Greater power is a country which has at its disposal more than an average amount of power (military, political, economic and financial) and, furthermore, is willing to use this

¹ See, below, Chap. 23.

² Burns, *l.c.*, p. 15.

³ At the meeting of January 26th, 1919.

⁴ Benito Mussolini, *Der Faschismus*, Munich, 1933, p. 26.

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power in order to maintain or improve its own position in the international society.¹

In the course of the development which brought about the supremacy of the European Greater powers over the world at large they grew into world powers. Their interests and responsibilities now extended over all the five continents of the globe and the oceans which link them together. Again, this expansion was the result of a variety of factors. It would not have been possible without the invention of the mechanical means of transport and communications. In addition, the economic system of capitalism has inherent tendencies towards unlimited expansion. Its interests in cheap raw materials and monopolized markets coincide with the political objects of any major power in a system of power politics, which is to reach the relative maximum of self-sufficiency, or at least of control over potential war materials,² and to command positions and territories likely to be of strategic importance. Furthermore, the rules of the game of power politics and of the balance of power system³ make it necessary for one side of the balance to receive roughly commensurate compensations if States belonging to the other side expand the realm of their territories.

This explains the 'outburst of imperialism which occurred in Europe at the close of the seventies and was the signal for an unparalleled era of exploration and annexation in the African continent'.⁴ The problem of imperialism is not quite as simple as Mussolini puts it: 'For Fascism, the growth of Empire, that is to say the expansion of the nation, is an essential manifestation of vitality, and its opposite a sign of decadence. Peoples which are rising, or rising again after a period of decadence, are always imperialist; any renunciation is a sign of decay and of death.'⁵ There are more rational reasons for this process than the mere biological interpretation or J. R. Seeley's famous assumption of the state of 'absence of mind' in which the expansion of this country took place.⁶ Nevertheless, it is worth while to pay some attention to these rather intuitive explanations. To turn to other Greater powers, imperial Germany aspired, to use Wilhelm II's well-known phrase,⁷ to a place in the sun. Nazi Germany

¹ See Arnold J. Toynbee, 'The Issues in British Foreign Policy', in *International Affairs*, 1938 (Vol. 17), pp. 310 *et seq.*

² Compare, below, Chap. 19. ³ *ibid.*, Chaps. 7 and 8.

⁴ *German Colonization*, London, 1920, p. 28 (Handbooks prepared under the direction of the Historical Section of the Foreign Office, No. 42).

⁵ Benito Mussolini, *Der Faschismus*, Munich, 1933, p. 26.

⁶ J. R. Seeley, *Expansion of England*, London, 1883, p. 8.

⁷ Emperor Wilhelm II, Speech on the Acquisition of Kiaochow, June 18th, 1901.

has put forward a variety of missions with which she regards herself to be charged by providence. For some time the liberation of Europe and the world at large from communism and the Jewish yoke seemed to be her self-appointed task; since her *rapprochement* with Stalin, however, this crusade has received a slightly more proletarian touch, and now the main danger to world civilization seems to threaten from those countries which are styled as the plutocracies. Fascist Italy seems to be intent on the revival of the traditions of Roman Caesarism in a world in which the neighbours of Rome present, unfortunately, tougher obstacles than the Gauls and even Carthage. During the Italo-Abyssinian conflict, Italy regarded it as her special duty to carry on her mission of civilization in Eastern Africa against a State 'for which barbarism has remained a system'. It was also maintained, in the Italian Memorandum submitted to the League, that Italy was defending in this struggle, not only her own 'safety and dignity',² but also 'the prestige and good name of the League of Nations' against this 'outlaw'.³ It is no wonder that Japan takes her tasks in the Far East equally seriously. The Aman restatement and clarification of Japanese policy towards China contains the following passage: 'We regard Japan as principally responsible for the maintenance of peace in Eastern Asia, and we are determined to fulfil this mission.'⁴

It seems that Seillière traced an essential motive responsible for imperialist expansion when he made a natural tendency towards aggrandizement responsible for this attitude of nations.⁵ There must be a deep-rooted cause, or a number of them, which, in a world inhabited by more than *one* nation, forces nations into a policy which implies the negation of the nationality principle. For the domination of one nation by another could rationally only be justified if it could be proved that there is any relation of superiority between races, but so far we have only evidence of differences, and any supremacy which in fact exists can be sufficiently explained by a superiority in external and technical means of domination. It may be asked whether this fact itself is not proof of the inferiority of those who have not been the first to invent, or to apply for military purposes, gun-powder, steam engines, telegraph and the modern means of warfare? Yet it appears

¹ League of Nations doc. C.340 M.171, 1935, VIII, p. 62.

² *ibid.*, p. 63.

³ Statement of Baron Aloisi to the Correspondent of *The Times*, reported *ibid.*, September 6th, 1935.

⁴ *New York Times*, April 18th, 1934.

⁵ E. Seillière, *La Philosophie de l'Impérialisme*, Paris, 1903-8 (4 vols.), and *Introduction à la Philosophie de l'Impérialisme*, Paris, 1911.

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that the technical achievements of this occidental civilization have been bought at such a heavy price that even this consideration might be an invitation to humility. And to go further and to maintain that, for instance, those Spanish adventurers who destroyed the Inca States were the representatives of a *higher* civilization seems to attach too much importance to muskets, horses, and even the spirit which may have directed them. Gobineau, in his work on the inequality of human races, vastly superior in quality to its imitations by his twentieth-century disciples in Germany and Italy,¹ had to be content with the naive statement: 'Those human groups who belong to the European nations or descend from them come nearest to beauty.'²

The economic aspect is stressed by Marxist writers. They explain the expansionism of highly industrialized countries by the inherent need of the capitalist system to conquer the huge reservoirs of raw materials and the potential markets of the Near and Far East, South and Central America and Africa. In Lenin's words, 'imperialism is the monopoly stage of capitalism', and 'the division of the world is the transition from a colonial policy which has extended without hindrance to territories unoccupied by any capitalist power, to a colonial policy of monopolistic possession of the territories of the world, which has been completely divided up'.³ As capitalist interests could, according to this doctrine, not achieve these objects without the assistance of the State machinery, the need for imperialistic expansion brought about the abandonment of *laissez-faire* liberalism, and an increase in State activities, which was not required in the previous stage of free competition. Even if this is admitted, and it seems obvious, that the economic factor in imperialist expansion is important, the decisive problem remains unanswered. The purpose of these theories is not only analysis, for underlying them is the implicit assertion that socialism or communism is incompatible with imperialism.

Allowing for rejoinder: that it is not a fair test to apply the criteria of this doctrine to Soviet Russia without consideration for her capitalistic environment, nevertheless, it seems fair to remember that Soviet Russia herself is only in form a federation. In practice, it is a huge

¹ See H. F. K. Günther, *Rassenkunde des deutschen Volkes*, Munich, 1930, or Paolo Oranot, *Gli Ebrei in Italia*, Roma, 1937.

² Count J. A. de Gobineau, *Essay sur l'inégalité des races humaines*, Paris, 1853, Vol. I, pp. 254-5.

³ N. Lenin, *Imperialism, The Highest Stage of Capitalism*, London, 1933, pp. 180-1. See also R. Luxemburg, *Die Akkumulation des Kapitals*, Berlin, 1913, Fritz Sternberg, *Der Imperialismus*, Berlin, 1926, R. Hilferding, *Das Finanzkapital*, Vienna, 1925, and N. J. Bukhanin, *Imperialism and World Economy*, New York, 1929.

colonial empire, the character of which is only less obvious than in other cases because of its contiguity. It may even be that the domination of the Kremlin over the more backward Asiatic tribes is a benevolent one. This does not, however, alter the position that such outside control is imperialism, if perhaps of the communist variety. Considering the conquest of Georgia by the U.S.S.R., the negotiations over the sale of the Chinese Eastern Railway with China in the best traditions of Czarist policy, the absorption of the Baltic States, the participation in the aggression of Germany against Poland, and last, but not least, the Soviet attack on Finland, one wonders whether from the standpoint of the peoples who are the object of this socialist expansion, capitalist imperialism is not a mild and old-fashioned variety compared with this virulent type of 'social-chauvinism'.¹

In spite of these weaknesses of the Marxist theories of imperialism, which seem to lie in their teleological implications, they have the merit of emphasizing aspects which are ignored by other schools of thought. An instance is Demiashkevich's interpretation of imperialism as 'the effort of a nation to surpass its natural ethnological limits, and to possess lands populated by a foreign ethnographic group'.² This definition supplies a common denominator for the Empires of Rome, Carthage, Alexander the Great and more modern world powers. The fascinating problem is not, however, this common feature of expansionism, but the differences between pre-capitalist and modern imperialism. For this aspect throws further light on the structure of our international society, which is the object of our analysis. Modern imperialism has to take into account a far higher degree of national consciousness on the part of its potential objects. Intensive national and nationalist feeling not being limited to *one* 'chosen people', there is a competition in imperialist ventures amongst those most favoured to take such a policy, which in itself sets limits to the spreading of the various empires, and so a number of relatively equal powers raise imperialistic claims, and form the aristocracy of the inter-State system. Further obstacles arise from the same source of nationalism in cases in which a nation State may not be strong enough or too wise to spend its force in surpassing its national limits, but nevertheless is sufficiently vigorous not to fall a victim to such expansionism. In other cases, the nationalism of the population in a potential object of imperialist

¹ N. J. Bukhanin, *Imperialism and World Economy*, New York, 1929, p. 38. See also Karl Kautsky, *Georgia: A Social Democratic Peasant Republic*, London, 1921, and W. E. B. du Bois, 'Black Africa To-morrow', in *Foreign Affairs*, 1938, p. 109.

² Michael Demiashkevich, *Shackled Diplomacy*, New York, 1934, p. 68.

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policy may be so fanatical and involve so many risks that even a world power might prefer to compromise, or be content to exclude rivals from that particular area. The history of imperialism in Central and South America offers examples in plenty for these nuances of imperialist policy.¹

While these circumstances make it advisable to exercise imperialist control as far as possible by indirect means, the technical possibilities of domination over wide areas have enormously increased as a result of modern inventions.² Equally, as Marxist writers rightly stressed, the economic stimulus of the development is far more intensive under our present economic system than ever before. Yet this race for markets and raw materials would never have received the degree of support from the State if the 'laws' of power politics had not coincided with those of our economic system. Another difference between former types of imperialism and their modern counterpart seems to lie in the proportion of those who benefit from such a policy as compared with the whole population of imperialist powers. In Rome, the plebs of the capital received *panem et circenses*. Now whole sections of the population of imperialist countries take part, through the medium of higher standards of living, in what James Mill rather narrowly described as 'a vast system of outdoor relief for the upper classes'.³

Thus we may sum up the phenomenon of modern imperialism as the policy of the highly industrialized countries to secure all over the world by direct or indirect domination political, economic, military and strategical positions and advantages.

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¹ Nearing, Scott, and Freeman, Joseph, *Dollar Diplomacy*, New York, 1925; J. B. Lockey, 'Pan-Americanism and Imperialism', in the *American Journal of International Law*, 1938 (Vol. 32).

² Bertrand Russell, *Power*, London, 1938, p. 170.

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CHAPTER 6

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As has been discussed in the preceding chapter, imperialist expansion may be achieved by means of direct and indirect domination. In the case of weak but sovereign States, their dependence on Greater powers is indistinguishable from other forms of *de facto* subordination common in the relations between the various categories in the hierarchy of States. The more intensive the relations between an expansionist power and the object of its imperialist policy are, the more the element of domination, which is otherwise hidden behind the cover of legal forms, becomes visible. From this point of view, colonies are most illustrative of the character of the modern international society. The fact that an imperialist power claims the benefits of the conception of national independence, but forces its supremacy on subject races and nations, is further evidence of the character of the international society. The application of this principle is successfully demanded by the imperialist power which is strong enough to secure its own Statehood, and is refused to the colonial population on grounds which may not always be convincing but which are overriding in a society ultimately based on the rule of force.

The common denominator for colonial possessions is that they do not 'possess the right themselves to conduct their foreign relations',¹ and that the colonizing State retains the ultimate power to determine the internal policy of the colonial territory.²

Again, it may be helpful to introduce the examination of this phenomenon by an examination of the legal position. How does international law square with the situation in which force decides as to whether a certain group is an independent entity or a colonial

¹ Judge Anzilotti's Independent Opinion on the Free City of Danzig and the International Labour Organization (Permanent Court of International Justice, August 26th, 1930), Series B.18, p. 22.

² *The Colonial Problem* (published by the Royal Institute of International Affairs), London, 1937, p. 231, and *Peaceful Change* (published by the International Institute of Intellectual Co-operation), Paris, 1938, pp. 172 *et seq.*

possession? In the first place, the benefits of international law are limited to the circle of those who are recognized as participants in this legal system. As Oppenheim-Lauterpacht put it, international law, as a law which is based on the common consent of the members of the 'Family of Nations', 'naturally' does not contain 'any rules concerning the intercourse with and treatment of such States as are outside that circle'.¹ The same writers, however, furnish evidence themselves for the doubt whether this statement is really as 'natural' as they seem to assume. For if they are right in saying that 'the territory of any State, even though it is entirely outside the Family of Nations, is not a possible object of occupation; and it can only be acquired through cession or subjugation',² what legal system, if not that of international law, contains such rules? The same law provides a convenient fiction according to which territory can be regarded as *territorium nullius*, as no-State's land, if it is 'inhabited by natives whose community is not to be considered as a State'.³ It must be admitted that in the sphere of doctrine this rule is hotly contested and that State practice has preferred cession and conquest as the legal forms of expansionist policy.⁴

As the colonial history of modern times since the papal Bull of Nicolas V (1452) proves, 'the voluntary consent of the natives whose country is taken possession of'⁵ could be secured without undue difficulties. In a decision of the Tribunal of Papeete (French Tahiti) of 1890 this introduction of colonial expansion is put on record: 'As to the arguments that the Island of Huahine is not French territory: The Governor of the French possessions in Oceania took formal possession of this Island in the name of the French Republic in response to a request for annexation repeatedly made by the inhabitants.'⁶ Similarly, the law officers of the Crown only confirmed prevalent theory and practice when they stated in their report to Lord Salisbury: 'The conquest of the King of Burmah and the military occupation of his territory have given the Crown the right to extinguish the independent existence of the State of Upper Burmah.'⁷ Thus, again, international law 'naturally' fits into the shape of things as they are in the reality of the international society.

¹ Oppenheim-Lauterpacht, *International Law*, London, 1937 (Vol. I), p. 46.

² *ibid.*, p. 438.

³ *ibid.*, p. 438.

⁴ Compare the excellent survey by M. F. Lindley, *The Acquisition and Government of Backward Territory in International Law*, London, 1926, pp. 10 *et seq.*

⁵ Mr. J. A. Kasson, the Plenipotentiary of the United States at the Conference of Berlin, 1885, *British and Foreign State Papers 1883-1884*, London, 1891 (Vol. LXXV), pp. 1,194-5.

⁶ *Journal de Droit International Privé*, 1891 (Vol. 18), pp. 158 *et seq.*

⁷ A. D. McNair, *The Law of Treaties*, Oxford, 1938, p. 398.

Yet it still remains to be explored why States want colonies and are hesitant to part with them. They are described as 'impediments to commerce, drawbacks on prosperity, pumps for extracting the property of the many for the benefit of the few'.¹ Merrivale, the Permanent Under-Secretary of State for the Colonies from 1847 to 1859, argues that 'with the colonial trade thrown open, and colonization at an end, it is obvious that the leading motives which induced our ancestors to found and maintain a colonial empire no longer exist'.²

Perhaps it is easiest to get to the bottom of this question by an examination of the claims of a country like Nazi Germany, which does not seem to have regarded the loss of the German colonial empire as such a benefit as it appeared to the antagonists of colonial domination: The argument put forward by the protagonists of this model case fall into various categories. In the foreground is the population problem.³ Hans Grimm's slogan '*Volk ohne Raum*' (people with an insufficient living space) brings out this aspect. Yet from a rational point of view this point is exposed to the counter-attack that Germany is doing all in her power to stimulate artificially an increase in her population. Furthermore, as the German Government limited its claims to the former German colonies,⁴ the argument becomes rather insignificant. For in the pre-1914 period, only 1.2 per cent. of Germans emigrated from Europe as compared with 2.32 per cent. of Italians, and the German population in all German colonies together only amounted to 20,000.⁵ The present German Foreign Secretary stressed the need for German colonies on the ground of her need for raw materials.⁶ The arguments against this claim are numerous. In the first place, Germany took part to a considerable extent during the post-1919 period in the trade with her former colonies.⁷ Second, there are other countries without colonies which do not suffer from a scarcity of raw materials as they have protected themselves against this emergency by a suitable trade policy. Third, if the German claim were limited to the former German colonies, as official German

¹ *Westminster Review*, 1830, p. 403. See, for a detailed analysis of early British separatism, C. A. Bodelsen, *Studies in Mid-Victorian Imperialism*, Copenhagen, 1924, pp. 13 *et seq.*

² 'The Colonial Question in 1870', in *Fortnightly Review*, 1870, p. 155. See, for other examples of Mid-Victorian separatism, Bodelsen, *loc. cit.*, pp. 32 *et seq.*

³ H. Schacht, *Neue Kolonialpolitik*, Berlin, 1924, p. 7.

⁴ Hitler's speech of January 30th, 1937, *New York Times*, January 31st, 1937.

⁵ *Raw Materials and Colonies* (published by the Royal Institute of International Affairs), London, 1936, pp. 7-8.

⁶ Speech by von Ribbentrop at the Leipzig Fair, *Manchester Guardian*, March 2nd, 1937.

⁷ *Loc. cit.*, pp. 61-2, in note 5 above, and G. Maroyer, *La Question des matières premières et la revendication coloniale*, Paris, 1937.

pronouncements led us to believe, even the unconditional return of these colonies would not essentially affect Germany's deficiency in almost all vital raw materials.¹ Fourth, there has been a tendency to take at its face value the German claim of self-sufficiency through the invention of synthetic raw materials and to refute the German contention by reference to the inconsistency with this boast of autarky. The German case was qualified by the introduction of the slogan which formed a recurrent theme in Hitler's speeches: Germany must export or perish. The difficulties created by economic nationalism and tariff barriers were not denied by the other side. It was only questioned whether this argument was relevant in so far as the former German colonies were concerned. For the exports of Germany to her former colonies, both in the pre-1914 and post-1919 period, were negligible compared with the whole export trade of that country.² Furthermore, there is an alleged shortage of exchange which makes it difficult for countries who have no colonies to buy the raw materials of which they are short. The League Committee for the study of the problem of raw materials drew attention to two features which seem to be ignored in the discussion of this question. 'The raw material-producing countries were only too willing to sell their commodities. They, and not the manufacturing countries, were unable to acquire the necessary foreign exchange. In addition, 'the difficulties now experienced by certain States in paying for raw-materials would immediately be alleviated if a political settlement were forthcoming which would permit them to reduce their present armaments expenditure'.³ To complete the list of economic arguments, it has been suggested that 'the real desire is not for access to raw materials, but to make profits'.⁴ Yet colonies, at least in the early stages of their development, are not paying propositions, but require capital imports which do not seem to return an appreciable interest.⁵

The Homeric fight of words culminated in the angry rejoinder: 'Why are these colonies not returned to Germany, if they are as

¹ *Germany's Claim to Colonies* (published by the Royal Institute of International Affairs), London, 1938, pp. 72-3; Sir Thomas H. Holland, *The Mineral Sanction as an Aid to International Security*, London, 1935, p. 50.

² *Germany's Claim to Colonies, l.c.*, p. 73, in note 1, above.

³ League Doc. E/MP/27 (2), pp. 24, 27.

⁴ Stanley Jevons in *Peace and the Colonial Problem* (published by the National Peace Council), London, 1936, pp. 14-15.

⁵ *The Colonial Problem, l.c.*, pp. 40 *et seq.*, in note 2, p. 85, above, R. Bonthby's letter to the Editor of *The Times*, December 24th, 1936, and Lord Hailey, *An African Survey*, London, 1938, pp. 1,323, 1,512.

worthless as these arguments suggest.¹ The German contention of hypocrisy on the part of the victors of 1919 might be justified if the discussion had been limited to the economic arguments outlined so far. Actually they only formed a foreground which was politely kept up in order to avoid the cruder issues looming in the dark. Schacht alluded to them when he said: 'To-day the possession of raw materials has become a political factor.'² This significance is rightly attached to commodities in a political system in which raw materials are always potential war materials. Furthermore, all the former German colonies have their strategical and military value; partly they could be used as air and submarine bases, and partly they might fulfil the function of detaching some of the forces of belligerents at war with Germany from use in other theatres of war.³ Thus, this question is, in General von Epp's words, a question not so much of bread, but of honour.⁴ Only this term has to be interpreted with the emphasis on that particular nuance which is congenial to a system of power politics, and which is best expressed by the word 'prestige'. Keeping this point in mind, it is understandable that Nazi Germany took up this case again as soon as she felt strong enough to do so. But it would be naive to attribute to the economic arguments put forward, or to moral indignation about the 'colonial guilt lie', more importance than they deserve as cloaks of requests for an increase in power on the part of the 'have-not' from those who 'have'.

The case of the former German colonies provides a useful, because concrete, background against which we can examine the reasons why States aspire to the possession of colonial territories. Yet it must be realized that the special geographic position and the economic structure of these colonies has perhaps misled us into overemphasizing three aspects: their strategic value and access to raw materials and to markets. There are, however, colonies such as the British Dominions (as long as they could be regarded as colonies), parts of French and Italian North Africa, or the highlands of Rhodesia and Kenya, the main value of which consists in the opportunities existing there for settlement. Other colonies such as the West Indies, Dutch East India or Ceylon, gave a chance to the European to direct the agricultural

¹ H. Schacht, 'Germany's Colonial Demands', in *Foreign Affairs*, New York, 1937, p. 230.

² *ibid.*

³ H. A. Smith, 'Die Kolonialfrage', in *Völkerbund und Völkerrecht*, Berlin, 1937, p. 10, and Lord Horne, letter to the Editor of *The Daily Telegraph*, September 13th, 1937.

⁴ *The Times*, June 19th, 1935.

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production while the manual labour is actually carried out by indigenous workers.¹

These political, military and economic advantages derived from colonial possessions explain sufficiently why countries wish to acquire or to keep them. Just, however, as States bent on an imperialist policy cover up these designs by missions which they perform in the service of high-flown ideas,² so colonial ideologies accompany the reality of colonization. In times which are not brutally honest, the necessity for an ideology arises if vested interests are attacked. In the case of colonies, such defence may be required against attacks from three quarters: countries which do not possess colonies, but which would like to do so; the intelligentsia amongst subject races; individuals and parties within the colonizing State who are in opposition to the government on general grounds, or for reasons connected with its colonial policy. The ideologies of colonial powers, therefore, consist either in reactions to, or anticipation of, such criticism. It follows from the heterogeneity among these three opposition groups that the government of the colonizing country has to fight on these three fronts with a variety of intellectual weapons. In defence against States of the totalitarian type, it might be enough to reply by an eloquent silence to Hitler's reproachful question: 'By what right do nations possess colonies?' or to answer in his own words: 'By the right of taking them.'³

In the case of other countries which either adhere to certain minimum standards of international morality, or at least admit the existence of such norms by their pretence of conforming with them, a more elaborate defence proves advisable.⁴ Usually, the colonizing State maintains that it is not the object of its policy to create monopoly rights for itself or its subjects, but that it administers the territory in question in the general interest. Such a statement of policy may imply that the colonial power has to take into account the interests of other powers, but it may also refer to the population of the colonial territories. In so far as the latter category is concerned, the 'mother' country may be content to prove that the protection and administration which it offers is a fair return for taxation and other obligations imposed, and that this policy is directed to ensure local prosperity.

¹ *The Colonial Problem, L.c.*, pp. 16-17, in note 2, p. 85, above.

² Compare Chap. 5, above, and P. H. Kerr, *Introduction to International Relations*, London, 1916, pp. 141 *et seq.*

³ Quoted by G. L. Steer, *Judgment on German Africa*, London, 1939, p. 13.

⁴ Compare Chap. 10, below.

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The object of such policy may be more far-reaching, and may be 'to endeavour to develop the natives themselves so that they should take an ever-increasing share in their own government'.¹

Thus, the twofold object of this ideology is the fulfilment of what Lord Lugard has called the dual mandate.² The same idea is expressed in the conception of trusteeship which was invoked from an early day in favour of application to colonial government. In the sixteenth century, Francisco de Victoria demanded that 'any intervention in Indian affairs by the Spaniards must be for the welfare and in the interest of the Indians and not merely for the profit of the Spaniards'.³ Locke's conception of the trust 'which is violated by all that does the people harm'⁴ was applied by Burke to India in his speech on December 1st, 1783, on Fox's India Bill: 'All political power which is set over men . . . ought to be some way or other exercised ultimately for their benefit. . . . Such rights, or privileges, or whatever else you choose to call them, are all in the strictest sense a trust; and it is of the very essence of every trust to be rendered accountable.'⁵ Burke insisted that in the last resort Parliament was responsible for the execution of this trust. 'The Charter granted to the East India Company 'is the very thing which at once gives the title and imposes on us a duty to interfere with effect, wherever power and authority originating from ourselves are perverted from their purposes, and become instruments of wrong and violence'.⁶

In 1835, through the influence of the Aborigines Protection Society, a Select Committee of the House of Commons was appointed 'to consider what measures ought to be adopted with regard to the native inhabitants of countries where British settlements are made, and to the neighbouring tribes, in order to secure for them the due observance of justice and the protection of their rights, to promote the spread of civilization among them, and to lead them to the peaceful and voluntary reception of the Christian religion'.⁷ Two years later, the

¹ Quincy Wright, *Mandates under the League of Nations*, Chicago, 1930, pp. 13-14, note 24.

² Lord Lugard, *The Dual Mandate in British Tropical Africa*, Edinburgh, 1923.

³ James Brown Scott, *The Spanish Origin of International Law*, Oxford, 1934, p. xlvii. See also Francisco de Victoria, *De Indis et de Jure Belli Relectiones*, Washington, 1917, pp. 160-1, and J. H. Parry, *The Spanish Theory of Empire in the Sixteenth Century*, Cambridge, 1940.

⁴ John Locke, *Civil Government*, London, 1924, p. 189. See also Ernest Barker in Gierke, *Natural Law and the Theory of Society*, Cambridge, 1934 (Vol. II), p. 299, and J. W. Gough, 'Political Trusteeship', in *Politica*, 1939 (Vol. IV), pp. 220 *et seq.*

⁵ *The Works of the Rt. Hon. Edmund Burke*, London, 1935 (Vol. III), p. 60.

⁶ *ibid.*, p. 61.

⁷ A. H. Snow, *The Question of Aborigines in the Law and Practice of Nations*, Washington, 1919, pp. 8-9.

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Committee reported that the contact between Europeans and colonial populations had been, 'unless when attended by missionary exertions, a source of many calamities to uncivilized nations'.¹ The criticism by public opinion of shortsighted exploitation of colonial populations by white traders, mine-owners and planters, and of an administration which adopts the policy of *laissez-faire* or even regards itself as the organ of these interests, forced the governments of colonial powers into the minimum of action, the adoption of colonial ideologies. It would, however, be rash to assume that these ideologies only fulfil the function of a convenient cover for disguised objects of colonial policy. In the hands of other governments, the colonial intelligentsia and internal opposition, these protestations of governments were used as weapons against them, and proved to be social forces with a certain amount of vigour of their own. Enlightened self-interest on the part of the representatives of capital invested in colonial territories worked in the same direction. Just as in the industrialized countries it has been more and more realized since the beginning of this century that decent minimum standards for labour are the safest bulwarks of the existing social and economic order, so in the colonial sphere far-sighted profit interests and humanitarian idealism work towards the same ends, though not for the same reasons. These tendencies were further strengthened by the coinciding interests of export industries and merchants who, in their desire to find absorbing markets, cannot thrive amidst exploitation and starvation. So, far from having to face a united imperialist front, the population in the colonies of the Western powers has learned to distinguish between very advanced sections of the white populations, such as missionaries, those vested interests which are interested in flourishing markets, those whose profits are based on cheap colonial labour, and the colonial administration which has the thankless task of finding somehow a balance between these diverging groups.²

Yet it must be realized that only the Home Legislature provides a control of these self-appointed trustees, as long as things remain in this stage. Even this supervision must remain theoretical if the Legislature is, as is generally the case,³ overwhelmed by an overbearing programme of work and more immediate tasks, i.e. those

¹ A. H. Snow, *The Question of Aborigines in the Law and Practice of Nations*, Washington, 1919, pp. 10 *et seq.*

² Compare Parker Thomas Moon, *Imperialism and World Politics*, New York, 1936, pp. 562 *et seq.*

³ See *The Times*, August 3rd, 12th, 14th, 17th and 19th, 1939.

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which lie nearer home than oversea colonies. Effective control of any government either comes from below or above. Control from below, i.e. by the colonial population, is possible only within limits in a colony, a territory subject to outside domination at least in spheres vital from the standpoint of the colonial power (defence, foreign policy). Control of the colonial power from above pre-supposes an international order and a degree of limitation of national sovereignty which is not compatible with the system of power politics. Therefore international control of colonial possessions could hardly be expected to develop along these lines. Its origins lie in the control by equals, i.e. other States. At the Congress of Vienna the principle was adopted that all States, colonial and non-colonial powers, had the right to participate in measures towards the abolition of the slave trade, as these questions of a humanitarian character were matters of general concern for all States.¹ These principles were reaffirmed, and guarantees for their observance strengthened, by a treaty between the five European Greater powers concluded on December 20th, 1841. By the Berlin Act of 1885 freedom of navigation and trade on the Congo and Niger was established, and the signatories were bound 'to watch over the preservation of the native tribes and to care for the improvement of the conditions of their moral and material well-being'.² In the General Act of the Brussels Conference of 1889-90 fresh measures for the suppression of the slave trade were introduced, and a zone defined within which the importation of firearms and ammunition and the import and manufacture of spirituous liquors were prohibited.³ Thus some measure of international control was achieved, if only in the rudimentary form that the other signatories of these international agreements were now entitled to demand the fulfilment of these no longer merely moral but contractual obligations.

During the Conference of Algeciras, when the powers tried to settle the conflict between France and Germany over Morocco, Theodore Roosevelt sent a message to the German Emperor which contained the following passage: 'If this arrangement is made, the Conference will have resulted in an abandonment by France of her claim to the right of control in Morocco, answerable only to the two powers with whom she had made treaties, and without responsibility to the rest of the world, and she will have accepted jointly with Spain a mandate

¹ *Déclaration des Puissances sur l'abolition de la traite des nègres*, February 8th, 1815.

² Article 6. See also A. B. Keith, *The Belgian Congo and the Berlin Act*, Oxford, 1919.

³ These conventions have been replaced by the Convention of St. Germain, September 10th, 1919.

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from all the powers, under responsibility to all of them for the maintenance of equal rights and opportunities. And the due observance of these obligations will be safeguarded by having vested in another representative of all the powers a right to have on their behalf full and complete reports on the performance of the trust, and with the further right of verification and inspection.¹ The Emperor turned down the suggestion with the argument that 'such a mandate would give to France a certain monopoly in Morocco which would prejudice the economic equality of the other nations, if no sufficient international counterpoise were created'.

It is no wonder that the other powers regarded international control in the first place as a means by which they secured their own interests. Nevertheless, ideologies, competition between the powers, and the pressure of public opinion had created a situation in which out of the conception of the political trust, the idea of the colonial mandate was born.²

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¹ March 7th, 1906. *Die Grosse Politik der Europäischen Kabinette, 1871-1914*, Berlin, 1925, Vol. 21, pp. 259-61, 276-8.

² See also, below, Chaps. 23 and 31.

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CHAPTER 7

MOTIVATIONS OF POWER POLITICS

EDMUND BURKE, in his *Vindication of Natural Society*, gives expression to an elementary sociological truth: 'These evils are not accidental. Whoever will take the pains to consider the nature of society, will find they result directly from its constitution.'¹ This implies that men are moulded far more by the type of society or community in which they associate than *vice versa*. Their social environment determines their behaviour much more decisively than their best intentions and goodwill. While it would be unrealistic to ignore the extent to which thought and action is conditioned by the social environment, it would be equally one-sided to fall victim to an easy-going and all-forgiving determinism which only too easily degenerates into an ideology in the interest of the forces bent on the maintenance of the international society on its present basis.

Men live together in isolated groups, the most important of which is the nation State.² If to these groups the distinction between society and community is applied,³ there can be hardly any hesitation in classifying these nation States as communities which co-exist in an association which equally definitely belongs to the opposite category, and which can perhaps most adequately be described as the international society. This difference in mental climate has been clearly perceived by Burke: 'In looking over any state to form a judgment on it, it presents itself in two lights: the external and the internal. The first, that relation which it bears in point of friendship or enmity to other states. The second, that relation which its component parts, the governing and the governed, bear to each other. The first part of the external view of all states, their relation as friends, makes so trifling a figure in history that I am very sorry to say it affords me but little matter on which to expatiate. The good offices done by one nation to its neighbour; the support given in public distress; the relief afforded

¹ Edmund Burke, *A Vindication of Natural Society*, London, 1925, p. 22.

² Compare, above, Chap. 3.

³ Compare, above, Chap. 1.

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in general calamity; the protection granted in emergent danger; the mutual return of kindness and civility, would afford a very ample and very pleasing subject for history. But, alas! all the history of all times, concerning all nations, does not afford matter enough to fill ten pages, though it should be spun out by the wire-drawing amplification of Guiccardini himself. The glaring side is that of enmity. War is a matter which fills all history, and consequently the only, or almost the only, view in which we can see the external of political society is in a hostile shape; and the only actions, to which we have always seen, and still see, all of them intent, are such as tend to the destruction of one another.¹

The difference in the structure of national and other more limited communities on the one hand and the international society on the other offers the key to the solution of the riddle how, simultaneously, various systems of norms regulating the behaviour of ultimately the same individuals can exist side by side.² Anyone who chooses a realist approach in the description of human relations is bound to suffer the same misunderstanding and misinterpretation as Niccolo Machiavelli. As Niebuhr pertinently remarks: 'A social analysis which is written, at least particularly, from the perspective of a disillusioned generation will seem to be almost pure cynicism from the perspective of those who will stand in the credo of the nineteenth century.'³ In his writings, the father of realism in the study of international affairs displays his 'knowledge of the deeds of great men – acquired through a long experience of modern events and constant study of the past'.⁴ Nevertheless, he could not escape being identified with the object of his analysis and being branded as immoral, as he could not refrain from a truthful, though unconventional, analysis and description of contemporary affairs. Machiavelli could not help noticing the real standards by which the strength of States is measured in the international society: 'I consider those capable of maintaining themselves alone who can, through abundance of men or money, put together a sufficient army, and hold the field against anyone who assails them.'⁵

In Hitler's words, 'Nature knows no political frontiers. She begins by establishing life on this globe and then watches the free play of

¹ *L.c.*, pp. 11–12, in note 1, p. 96, above.

² Compare, below, Chaps. 10 and 11.

³ Reinhold Niebuhr, *Moral Man and Immoral Society*, London, 1933, p. xxv.

⁴ Niccolo Machiavelli, *The Prince, Dedication to Lorenzo the Magnificent*, London, 1935, p. 1.

⁵ *ibid.*, p. 47.

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forces. Those who show the greatest courage and industry are the children nearest to her heart and they will be granted the sovereign right of existence'.¹ Confronted with a society of this type, the 'first law of nature' consists for any entity in its 'self-preservation and self-defence'.² Any assertion of such generality is exposed to the objection that it contains an element of exaggeration. Again, it might be useful to remember that any sociological analysis cannot avoid using ideal types which never occur in actual reality in such purity.³ Men are never motivated by only *one* motive, and the average human mind never works with absolute consistency and exclusively or even predominantly in the light of rational consciousness. A certain subjectivity is therefore necessarily attached to any interpretation of complex phenomena in the sphere of group psychology. Rational arguments in this field are, however, as much likely to miss the mark as judgments based on intuition, but checked by experience. Even if we should be mistaken, in regarding love of power as the sole human motive, 'this mistake would not lead us so much astray as might be expected in the search for causal laws in social science, since love of power is the chief motive producing the changes which social science has to study'.⁴

It is not necessary to minimize the part played by other motives, such as passion, fear or impulses of self-sacrifice. In the end, however, the answer of the Athenian Ambassador to the representatives of Sparta in 432 B.C. is as profound and wise as any interpretation of human behaviour in an anarchic society can be: 'An empire was offered us. Can you wonder that, acting as human nature always will, we accepted it and refused to give it up again, constrained by three all-powerful motives: ambition, fear, interest? We are not the first who have aspired to rule; the world has ever held that the weaker must be kept down by the stronger.'⁵

The means of achieving this end is power. Military power, economic control and command of opinion are only three facets of the same phenomenon, and there has been a marked tendency in recent years towards a unification of the various forms of power under the control

¹ Adolf Hitler, *Mein Kampf*, Munich, 1930, p. 147 (translation, London, 1939, p. 123).

² William Pitt in the House of Commons in his speech on the Convention with Spain, March 8th, 1738 (Cobbett's *Parliamentary History of England from the Norman Conquest, in 1066, to the Year 1803*, London, 1812, Vol. X, col. 1,283).

³ Compare, above, Chap. I.

⁴ Bertrand Russell, *Power*, London, 1938, p. 13.

⁵ Thucydides, *History of the Peloponnesian War*, Bk. I, LXXVI.

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of one organization.¹ The next question which arises is to enquire for what purpose power is accumulated and what entity is the object of this policy of self-preservation and self-interest. In view of the fact that diplomacy has a certain flair for lofty ideals,² it is not always simple to penetrate through the cover of alleged moral conflicts to the real issues involved. The more politics and economics became inter-related, the more difficult it became to separate questions of honour from pecuniary calculations.³ Or, to choose another example, when Italy dispatched its ultimatum to the Porte regarding Tripoli, the Italian Government maintained that this step was required 'by the general exigencies of civilization'.⁴ According to *The Cambridge History of British Foreign Policy*, the ultimatum, and the ensuing war between Italy and Turkey, was one of the repercussions of the Agadir crisis which made possible the seizure of Tripoli 'by Italy, who had long cast greedy eyes on the African coast'.⁵ Pretensions and disguises of this sort offered an additional argument to Burke in his attack against artificial as compared with natural society: 'But if there were no other arguments against artificial society, than this I am going to mention, methinks it ought to fall by this one only. All writers on the science of policy are agreed, and they agree with experience, that all governments must frequently infringe the rules of justice to support themselves; that truth must give way to dissimulation; honesty to convenience; and humanity itself to the reigning interest. The whole of this mystery of iniquity is called the reason of state. It is a reason which I own I cannot penetrate.'⁶

Utilitas rei publicæ was identified in the period of absolutism with dynastic interests. It was gradually replaced by conceptions such as national or public interests when the people asserted their right of control even in the realm of foreign policy.⁷ Thus the nation emerges as the end, the preservation and interest of which becomes the main consideration of foreign policy. In the words of Lord Palmerston, 'the principle on which I have thought the foreign affairs of this country ought to be conducted, is the principle of maintaining peace

¹ Russell, *l.c.*, p. 135. See also E. H. Carr's application of these ideas to international politics in *The Twenty Years' Crisis*, London, 1939, pp. 130 *et seq.*

² See, below, Chap. 10.

³ Compare C. A. Beard, *The Idea of National Interest*, New York, 1934, p. 19, and L. Perla, *What is National Honour?*, New York, 1918.

⁴ Sir Thomas Barclay, *The Turco-Italian War and its Problems*, London, 1912, p. 109.

⁵ *The Cambridge History of British Foreign Policy*, Cambridge, 1923 (Vol. III), p. 454.

⁶ Burke, *l.c.*, pp. 23-4.

⁷ C. A. Beard, *l.c.*, pp. 9 *et seq.*

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and friendly understanding with all nations, so long as it was possible to do so consistently with the due regard to the interests, the honour, and the dignity of this country. . . . If I might be allowed to express in one sentence the principle which I think ought to guide an English Minister, I would adopt the expression of Canning, and say that with every British Minister the interests of England ought to be the shibboleth of his policy'.¹ The duty of Statesmen to abide by this principle has been justified by the idea of the political trust which governments execute on behalf of their people. 'It is just as true now as ever that it is vain to expect governments to act continuously on any other grounds than national interest. They have no right to do so, being agents, not principals.'² For this reason, in the opinion of Sir John Fischer Williams, the reproach of selfishness is beyond the point if foreign policy is based on 'the interests of our country': 'Those who decide on taking such risks are the members of the government, in particular the Prime Minister and the Foreign Secretary; in taking the decision they do not act selfishly for themselves – they have a duty to the 40 odd millions of the population of this country; for these millions they are trustees, for them the risk is undertaken. The government may or may not be unwise, but it is not fair to call it selfish.'³

Yet nations have become increasingly suspicious, whether foreign policy is really conducted in their interest or whether this is only another of the many ideologies current in the sphere of international relations, particularly, since the second half of the nineteenth century when economic and political interests became so intermingled that it was hard for any onlooker to decide whether foreign policy was the function of economic interests or *vice versa*.⁴ The gulf which existed between the reality of international politics and popular aspirations for international order widened to such an extent that governments no longer felt sure whether an open and even sincere appeal to national interests would have the desired result. They therefore tended to justify their policies on still broader grounds, and identified them with the interests of humanity and peace. Two examples may illustrate this point. Karl Radek, the former Editor

¹ Lord Palmerston on the Treaty of Adrianople in the House of Commons, March 1st, 1848, *Hansard*, Vol. XCVII (Third Series), cols. 113–20.

² A. T. Mahan, *The Problem of Asia and its Effect upon International Politics*, London, 1900, pp. 97, 187.

³ Letter to the Editor of *The Times*, February 3rd, 1939.

⁴ Compare, above, Chaps. 2 and 5.

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of *Izvestia*, explains the foreign policy of the U.S.S.R. as follows: 'The Soviet Union is now strong enough to defend her territorial integrity and interests. Concentrating her efforts on building up peaceful industries for meeting the needs of her own population, keeping aloof from armed interference with the affairs of foreign nations, the Soviet Union will seek a peaceful settlement of all conflicts which may arise between her and her neighbours. She will base her policy exclusively on her own interests, which correspond with the interests of peace both in the East and in Europe.'¹ The British Prime Minister explained his conception of British interests in terms hardly distinguishable from those quoted above: 'I do not look upon this matter in too narrow a spirit of what are purely British interests in the selfish sense of the word. . . . You cannot dissociate British interests from the interests of the world. The greatest of all British interests is the maintenance of peace, and it would be in rather an international spirit, believing that British interests are best served by a solution which takes account of the needs and the claims and the rights of other nations as well as our own, that I would desire to approach the subject of how we should lay down the lines of permanent peace.'²

These speeches from diametrically opposed quarters indicate one of the limitations of power politics. The 'realists' have to appeal to conceptions which are freely borrowed from another system of international organization, from the conception of an international community in which alone national and international loyalties can be harmonized and peace be established on the basis of the rule of law. It may be objected that even in an international community power cannot be separated from politics, and that therefore, apparently, politics and the rule of law are not as incompatible with each other as it is here suggested. If power is merely 'the desire to be able to produce intended effects upon the outer world',³ this argument would be convincing. The term *power politics*, however, as understood in common usage, implies an additional and very specific connotation: an element of arbitrariness and the use of physical force by the contending groups as contrasted with force controlled by an impartial organ of government in accordance with generally accepted principles.⁴ If this is understood by the rule of law, then it becomes clear

¹ *Foreign Affairs*, New York, 1932, p. 557.

² House of Commons, May 19th, 1939.

³ Russell, *l.c.*, p. 274.

⁴ See A. B. Keith, *Constitutional Law*, London, 1939, pp. 31 *et seq.*, for a comparable conception of the rule of law within a municipal system of community law.

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that power politics is congenial to an international society based on the right of the stronger, but is the negation of any international community.

Conflicts between capital and labour have been adduced as examples purporting to prove that in this sphere, too, 'force has always been a crucial factor'.¹ The utmost this parallel suggests is that it would be an exaggeration to regard any group divided by class conflicts as a community in the full sense of the word. It must be admitted that even nation States contain elements which make it advisable to classify them as hybrids between a community and society. In addition, democratic and authoritarian States alike, not to speak of the measures adopted in totalitarian countries, have found means and ways to keep such disputes within limits, or to supersede them by orderly processes which bring them within the purview of the rule of law. A community which is exceptionally strong can stand the risk of a *laissez-faire* policy regarding contending social forces. Once these conflicts threaten the existence of the group as a whole the only alternative is subjection of those sectional interests to limitations which keep them within bounds, or the disintegration of the community into a society governed by the rule of the jungle.

The parallel introduced by Professor Carr is, however, highly instructive in another aspect. If we assume that all the States of which the international society is composed act according to the precepts of self-preservation and self-interest, limited only by their unequal strength, and if the interests of these separate entities are not identical with the common good, then the war of all against all, or international anarchy, seems to be the inescapable fate of this society. This is one of the assumptions from which Professor Carr starts: "The alleged dictatorship of the Great Powers, which is sometimes denounced by utopian writers as if it were a wicked policy deliberately adopted by certain states, is a fact which constitutes something like a 'law of nature' in international politics."² The other assumption which is put forward equally categorically seems to be that the alternative of an international society endowed with the necessary powers for co-ordinating the unruly Leviathans only exists in the minds of 'utopian' writers. If the reader innocently enquires why all that *must* remain as it undoubtedly is, then he must rest content with Professor Carr's categorical statement 'that power cannot be internationalized'.³ At this stage, the reader may well turn back and find

¹ Carr, *l.c.*, p. 270.

² *ibid.*, p. 134.

³ *ibid.*, p. 176.

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consolation in another statement of the same writer: 'The conditioning of thought is necessarily a subconscious process.'¹ If we analyse this question from a realist point of view it does not seem fruitful to follow in Professor Carr's footsteps. For it is hard – or, to be more accurate, impossible – to prove that the present hierarchy of States based on differences in strength constitutes 'something like a law of nature'. It seems equally difficult to show on a basis of true science that power can or cannot be internationalized if we wish to comply with the requirements of 'hard and ruthless analysis'.² Yet it seems perfectly possible, from the standpoint of detached research which consciously distinguishes 'the analysis of what is from aspiration about what should be',³ to indicate the conditions on which this system of power politics depends. If we do so, we keep Professor Carr's parallel regarding disputes between capital and labour in our mind. Does not this example suggest that apparently eternal laws of *laissez-faire* on the part of the State, seemingly permanent divisions of functions between the State and the individual, were essentially modified within rather short periods of time? Could not Professor Carr's exposure of the economic *laissez-faire* doctrines⁴ be usefully applied to his own 'laws of nature' and 'cannot's' in the international sphere?

While it would surpass the limits of our analysis of what is, to express an opinion on the chances of such a development, it is within the purview of research to lay bare the conditions and assumptions of the existing international order. The basis on which the structure of power politics rests is the reality and conception of the sovereign State. It is true that as long as the Leviathans insist on regarding themselves as ends in themselves the social foundations of this system are firm. But, in spite of the staying power which they have so far, these nation States are not stars which follow eternal laws of Nature. They are composed of human beings. International relations are interhuman relations. The allegiances of men have changed in the past. Loyalties are not necessarily always attached to the same object. It is ultimately a question of will-power and decision whether nations continue to be shaped into relations with each other which make the international society the playground of highly armed and egocentric entities, or whether they are capable of transforming themselves and their international anarchy into a community held together by the rule of law and new and wider loyalties.

As Professor Carr rather strongly underlines, the belief in an

¹ Carr, *l.c.*, p. 91.

² *ibid.*, p. 13.

³ *ibid.*

⁴ *ibid.*, pp. 36 *et seq.*

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ultimate harmony of interests in the international society can be traced back to nineteenth-century formulæ.¹ The opposite creed that anyone else's advantage is one's own disadvantage may appeal to more primitive instincts. But the genealogy of this idea, which is closely associated with the ideologies of the mercantilist period, is hardly more impressive, and the scientific foundations of both doctrines seem equally scanty. Which of the two prevails depends on whether mankind is strong enough in will-power to break the vicious circle of the interrelationship between the existing society and the mentality which such an environment produces. If men are content with an international society in which *homo est homini lupus*, this attitude decisively moulds the character of the inter-State system. If they make up their minds to base their relations on the principles of mutual self-sacrifice and self-denial,² or are swayed by emotional forces along this line, the transformation of the international anarchy into a supra-national community is achieved.

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CHAPTER 8

FORMS OF POWER POLITICS

ARMAMENTS, ISOLATION, UNIVERSAL IMPERIALISM, AND ALLIANCES

THE strength of a State in a system of power politics ultimately depends on its military power and all those subsidiary factors which enable a country to stand the ordeals of the various kinds of pressure and force which are employed by States against each other.

The size of the population is certainly an important aspect. The fact that those States which most consciously apply pressure politics, such as Germany and Italy, artificially stimulate increases in their population, in spite of their concomitant allegations that they lack living space, can certainly be attributed mainly to such considerations. Conversely, France's fear, even in the time of the Weimar Republic, of the numerical superiority of Germany proves the same point. Yet India and China, with all their enormous populations, indicate that numerical strength is only one of the various elements of power. An efficient and highly industrialized economic system, access to food-stuffs and raw materials, wealth, the possession of strategically valuable territories and bases, national unity, and last, but certainly not least, the willingness to apply the instruments of power politics and to take the risks involved, are the conditions of success in a system of power politics.¹

The most inoffensive policy which a country can pursue in this environment is one of isolation. As the term itself suggests, this attitude of detachment might be conceivable if the country in question were by nature actually isolated from all others. Yet distances have become a matter of relativity since the age of discovery which has transformed the world into *one* activity area, and the shrinkage of distances has

¹ Compare, for the military strength of the powers, *The Armaments Yearbook*, published annually by the League of Nations. See also Max Werner, *The Military Strength of the Powers*, London, 1939, and the records of the Sixth League Assembly, *Minutes of Fourth Committee* (1925), for the standards of measurement on which the financial contributions of the League members to the budget of the League were based.

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taken the question of isolation out of the hands of any State which wants to isolate itself. The decision on this question has become increasingly one which depends equally on other powers which may covet the wealth or other attractive features of the would-be isolationist. Therefore, only exceptionally strong powers could ever hope to attain national security by means of such a policy, but the same States had to watch and protect the economic and financial interests of their subjects all over the world and were thus already precluded on these grounds from achieving isolationism. In the case of smaller States, the history of neutrality has proved that it takes more than one to remain outside a war, and that armed strength is a sociological condition even of a policy the only purpose of which consists in being left alone. As the history of Swiss neutrality proves, the mere resolution of Switzerland herself to maintain her neutrality would not have achieved this object. The permanent neutralization of 'the central fortress of Europe'¹ was based on the understanding between the Greater powers not to compete with each other for the domination of this country 'in the general interest'² of Europe. Thus Swiss neutrality was 'sustained by the international situation, a foundation which is, however, extremely solid', as even the 'realist' Treitschke felt bound to admit.³

Since the era of the steamship⁴ and still more since the invention of the aeroplane, Great Britain, even if she had ever wanted to, could no longer withdraw into the position of a mere onlooker of European affairs. She now formed an integral part of Europe, and Europe and the world at large had now become an 'enclosed chess-board', whereas 'formerly statesmen played only on a few squares of a chess-board of which the remainder was vacant'.⁵ Yet there remains the U.S.A., commonly described as a stronghold of isolationism. The interpretation of the foreign policy of the U.S.A. in general, and of the Monroe Doctrine in particular, in this light is, in the opinion of a distinguished American observer, 'sheer legend-mongering'. 'Monroe's declaration

¹ 'Swiss Memorandum concerning the Neutrality of Switzerland', February 8th, 1919, printed in David Hunter Miller, *The Drafting of the Covenant*, New York, 1928, Vol. I, p. 431.

² Declaration of the eight European powers, signed March 20th, 1815; Accession of Switzerland on March 27th, 1815.

³ H. von Treitschke, *Politics*, London, 1916, Vol. I, pp. 32-3.

⁴ See, on the effects which the invention of the steamship produced on British isolationism, Spencer Wilkinson, in the *Geographical Journal*, 1904 (Vol. 23), p. 437, and on Great Britain's 'splendid isolation', *The Cambridge History of British Foreign Policy*, Cambridge, 1923, Vol. III, pp. 20 *et seq.*

⁵ Wilkinson, *ibid.*, p. 438.

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was in effect a diplomatic co-operation with England, an intervention in the system of the balance of power strictly parallel to the action of 6 April, 1917. That declaration in no sense pledged us to remain out of international relations with Europe, Latin America, or the rest of the world, but has in fact been the chief single cause and principle of our participation in world politics ever since. And the attitude of the United States in the Boxer episode and the Moroccan affair may be accepted as characteristic of our policy in all our foreign relations.¹ Since then Japan's policy towards China and relations between Germany, Italy and Spain and fascist factions in Central and South America have still more contributed to make those responsible for American policy conscious at least of the objective unity of the world. President Roosevelt expressed this sentiment in a speech on April 14th, 1939: 'We have an interest wider than that of the mere defence of our sea-ringed continent. We now know that the development of the next generation will so narrow the oceans separating us from the Old World that our customs and our actions are necessarily involved in theirs, whether we like it or not. Beyond any question, within a few scant years air fleets will cross the ocean as easily as to-day they cross the closed European seas. Economic functioning of the world becomes therefore necessarily a unit, no interruption of which anywhere can fail in the future to disrupt economic life everywhere. The past generation in Pan-American matters was concerned with constructing the principles and mechanism through which this hemisphere would work together, but the next generation will be concerned with the method by which the New World can live together in peace with the Old.'²

The U.S.S.R. is perhaps the only country in the world which from the standpoint of economic self-sufficiency might have safely set out for a policy of isolation. It even enjoyed the exceptionally favourable position of having a contiguous colonial empire which could in the course of time be amalgamated with Russia proper. Both the policy of Czarist and Bolshevist Russia, however, prove that either that country did not feel sufficiently self-confident to rely on its own strength or that the expansionist policy of her Statesmen aimed higher than at such a limited objective.

Thus it appears that isolationism to-day is nothing but an escapist

¹ Pitman B. Potter, 'The Myth of American Isolation', in *A League of Nations*, Boston, 1921, pp. 460, 479, and 'The Nature of American Foreign Policy', in *The American Journal of International Law*, 1927 (Vol. XXI), pp. 53 *et seq.*

² *New York Times*, April 15th, 1939.

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form of day-dreaming which has no reality in a system of power politics.

The opposite extreme has appealed to rulers throughout the ages. Herodotus lets Xerxes express this conception of universal imperialism: 'Once let us subdue this people, and those neighbours of theirs who hold the land of Pelops, the Phrygians, and we shall extend the Persian territory as far as God's heaven reaches. The sun will then shine on no land beyond our borders; for I will pass through Europe from one end to the other, and with your aid make of all the lands which it contains one country. For thus if what I hear be true, affairs stand. The nations whereof I have spoken, once swept away, there is no city, no country left in all the world which will venture so much as to withstand us in arms. By this cause, then, shall we bring all mankind under our yoke, alike those who are guilty and those who are innocent of doing us wrong.'¹ The Roman Empire offers another example of this type of imperialist domination which extended over the whole of the then known civilized world. This is the spirit in which Anchises appeals to Æneas, the father of the Romans: '*Tu regere imperio populos, Romane, memento. Hæ tibi erunt artes; pacisque imponere morem, Parcere subjectis, et debellare superbos.*'² Charlemagne planned in the same way to realize *pax terrena* by subjecting all nations to a new Roman Empire. Even during the Investiture Contest general agreement existed that *pax et iustitia* could best be achieved through a world monarchy. This idea found its famous sponsors in poets and philosophers like Dante (*De Monarchia*, 1314), Marsilius of Padua (*Defensor Pacis*, 1324) and Honoré Bonnor (*Arbre de la Paix*, 1380).³ The Emperor Frederick II of Hohenstaufen dreamed of establishing himself as *dominus mundi* and leader of the *corpus sæcutorum principum*.⁴

Gradually, however, the conviction grew that only the Holy See, as *minister omnipotentis* and *vicarius Christi*, could be at the head of this *omnium Christianorum una res publica*, as St. Augustine called this world empire in his *Civitas Dei*.⁵ According to this theocratic doctrine, the Pope was invested with the rights and duties of the supreme arbiter between peoples. His authority was to be universal, for the

¹ Book VII, 8.

² Virgilius, *Æneid*, Lib. VI, verses 851-3. See also Lib. I, verses 274-9, and Lib. VI, verses 780-97.

³ Compare Hans Kelsen, *Die Staatslehre des Dante Alighieri*, Vienna, 1905, and the present writer's *The League of Nations and World Order*, London, 1936, pp. 7 *et seq.*

⁴ E. Kantorowicz, *Kaiser Friedrich der Zweite*, Bonn, 1931, pp. 471 *et seq.*

⁵ *De opere monachorum*, 33 (XXV).

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philosophical thinking of the Middle Ages was based on the *principium unitatis*.¹ In the words of Dante, 'being is naturally antecedent to unity, and unity to goodness; that which has completest being has completest unity and completest goodness. And as far as anything is from completest being, just so far is it from unity and also from goodness'.² In our own century, the idea of universal imperialism has found a follower in Adolf Hitler, who conjectures that the German people 'as the true chosen people of God' could become in its dispersal 'the omnipresent power, the masters of the earth'.³

It was possible in antiquity and in the Middle Ages to conceive one world empire in which war was reduced to police action against uncivilized tribes on the borders of the empire and to revolution if resorted to by any community within. For then the sociological conditions of such an order were fulfilled. They are: first, the overwhelming superiority of the ruling State, particularly in the military sphere; second, the existence of an ideology of superiority from which it naturally follows that the 'chosen' people rule over the rest of the world; and, third, the acceptance of this hierarchy by the subject peoples. As Napoleon found when he attempted to realize his much more limited plans,⁴ they ran counter to the conception of nationhood and virulent nationalism all over the world. In addition, none of those powers which can regard itself as a world or Greater power can boast of that degree of power supremacy which would be required to eliminate power politics by power politics. From a technical point of view, it would seem easier to-day than ever before to realize world domination in the full sense of the word and not only limited to the world as known in antiquity or the Middle Ages. While revolt and secession were relatively easy in the days of Persian satraps and Roman pro-consuls to-day 'modern technique, not only through the rapidity of the transmission of messages, but also through railways, telegraph, motor traffic and governmental propaganda, has made large empires much more capable of stability than they were in former times'.⁵

In view of the fact that both isolation and universal imperialism cannot be regarded as practical politics, armaments are the most

¹ Lord Bryce, *The Holy Roman Empire*, London, 1875, pp. 89 *et seq.*, Thomas de Aquino, *Opera omnia*, Antwerp, 1612, *De regimine principum*, I, 19; III, 13; IV, 19.

² Dante, *De Monarchia*, Cambridge, 1904, Bk. I, Chap. xv, p. 54.

³ H. Rauschnig, *Hitler Speaks*, London, 1939, pp. 149-50.

⁴ Count de Las Cases, *Mémoires de Sainte-Hélène*, Paris, 1893, Vol. IV, pp. 17, 125-6.

⁵ Bertrand Russell, *Power*, London, 1938, pp. 172-3.

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obvious answer to the challenge presented by the structure of the international society. Weapons are, however, only useful if they give adequate protection. This introduces an element of relativity which is determined by the likely opponents of a country. For defensive purposes, it should be sufficient if a country achieves a status of equality in armaments with its potential enemies. Caution and lack of full information will, however, make it advisable to allow for a safety margin which in actual fact may transform equality into superiority. As this situation necessarily implies inferiority on the other side, even a system of power politics consisting only of two entities provides all the essentials of an armament race. As long as reason is not entirely ruled out, countries at least admit the limitations which are imposed upon them by the margin of their resources. Otherwise they anticipate already in peacetime the normal results of a lost war, impoverishment of the people and State bankruptcy.

For this reason, it is simpler to supplement one's own resources, armaments and man power in a different way and by a device which is as old as power politics. If you have chosen your enemy, you have chosen your friend, i.e. the enemy of your enemy. Kautilya, the adviser of the Indian king Chandragupta, about 300 B.C. wrote in his *Arthashastra*: 'The king, who, being possessed of great character and best-fitted elements of sovereignty, is the fountain of policy, is termed the conqueror. The king who is situated anywhere immediately on the circumference of the conqueror's territory is termed the enemy. The king who is likewise situated close to the enemy, but separated from the conqueror only by the enemy, is termed the friend (of the conqueror). A neighbouring foe of considerable power is styled an enemy; and when he is involved in calamities or has taken himself to evil ways, he becomes assailable; and when he has little or no help, he becomes destructible; otherwise (i.e. when he is provided with some help), he deserves to be harassed or reduced. Such are the aspects of an enemy. In front of the conqueror and close to his enemy, there happen to be situated kings such as the conqueror's friend, next to him, the enemy's friend, and next to the last, the conqueror's friends' friend. In the rear of the conqueror, there happen to be situated a rearward enemy, a rearward friend, an ally of the rearward enemy, and an ally of the rearward friend.'¹ The sociological conditions of power politics, the juxtaposition of a number of armed and sovereign States, being fulfilled in ancient India, Greece, Renaissance Italy, and the whole

¹ Kautilya, *Arthashastra*, Mysore, 1929, p. 290.

twentieth-century world Kautilya expresses views which are as realistic to-day as they were more than 2,000 years ago.

In a system of power politics the overriding strength of the need to define relations of friend and enemy according to such impersonal principles of what may be called 'bad neighbour policy' can be gauged from cases in which interests of power politics and ideological fronts seemed to clash. At the time when Europe was divided by the religious wars of the sixteenth century, i.e. at a time when ideological conflicts were at a high pitch, Francis I, the 'most Christian king', allied himself with the Osmons against the Hapsburg Empire by the Treaty of Belgrade (1536). When in the early forties the war again started between the two European Greater powers, Francis resorted once more to this palliative, and in 1543 a Franco-Turkish fleet bombarded Nice and set it on fire.¹ This alliance between a Catholic power and the 'infidels' is an indication of the vigour displayed on the threshold of the modern State system by the principles of self-interest and self-preservation. The influence then still exercised by the Christian traditions of the Middle Ages, and the condemnation of such an amoral policy by contemporary writers as Gentili² could not prevail against the obvious advantages of an alliance with a country which threatened the Hapsburg Empire in the rear. It was a choice between the alternative of sacrificing French independence to the Spanish hegemony threatening France from the South and East, and of making terms with all the enemies of Charles V, whether they were Turks or German Protestants.³

In the pre-1914 period, the alliance between the liberal and democratic French Republic and the autocracy of Czarist Russia against the German Empire provides a further example for this thesis.⁴ The most superb refutation of the doctrines of ideological fronts, which were so exceedingly fashionable only a little while ago, was, however, reserved to the U.S.S.R. and the Third Empire. In 1926, in line with previous Soviet statements, Stalin expressed a rather uncompromising opinion on the League of Nations: 'We don't want to enter the League of Nations; for the League of Nations is an organization designed to be the screen for the preparation of new

¹ *The Cambridge Modern History*, Cambridge, 1907, Vol. I, pp. 94 *et seq.*, and Vol. II, pp. 76 *et seq.*; E. Larisse's *Historie de France*, Paris, 1903-4, Vol. V, pp. 78 *et seq.*; W. Windelband, *Die auswärtige Politik der Grossmächte*, Essen, 1936, pp. 73 *et seq.*

² *De Jure Belli Libri tres*, Oxford, 1933, Vol. II, p. 402.

³ Windelband, *l.c.*, pp. 78 *et seq.*

⁴ See Baron Boris Nolde, *L'Alliance franco-russe*, Paris, 1936.

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wars.¹ Eight years later, the Foreign Commissar of the U.S.S.R. intimated in a note addressed to the President of the League Assembly the willingness of that country to 'become a member of the League, occupying therein the place due to itself, and undertaking to observe all the international obligations and decisions binding upon members in conformity with Article 1 of the Covenant'.² Mr. Eden emphasized in his speech, in the Assembly in which the new member was welcomed, the point which must have been also in the minds of other delegates after the prestige of the League had suffered so serious a drawback in view of Japan's and Germany's withdrawal from the League: 'His Majesty's Government in the United Kingdom cordially welcome the addition of so powerful a State, and one comprising so vast an area and embracing so considerable a proportion of the world's population, to membership of the League of Nations.'³ The rising tide of Nazism induced French politicians to forget the expropriation of French holdings of Russian securities and to 'remember how Francis I allied himself with Turkey, not only in the face of, but actually against, the whole of Christendom because this was what the interest of France required'.⁴ Equally emphatic was Hitler about the eternal gulf which separated Nazi Germany from Bolshevik Russia: 'It must never be forgotten that the present rulers of Russia are blood-stained criminals, that here we have the dregs of humanity which, favoured by the circumstances of a tragic moment, overran a great State, degraded and extirpated millions of educated people out of sheer blood lust and that now for nearly ten years they have ruled with such a savage tyranny as was never known before.'⁵ These feelings were heartily reciprocated by the U.S.S.R.: 'Our answer to the Nazi dream of invading the Ukraine is an old Ukrainian saying. Just as a pig can never look at the sky, so Hitler will never be able to see our cabbage patch.'⁶

Yet since then the world has become accustomed to a change in

¹ Compare, for an anthology of similar quotations, Kathrin W. Davis, *The Soviets at Geneva*, Geneva, 1934.

² The League of Nations, *Official Journal*, 1934, pp. 1,393-4.

³ *Records, Fifteenth Assembly, Plenary Sessions, 1934*, p. 24.

⁴ Herriot in the debate in the French Chamber preceding the ratification of the non-aggression treaty of 1932 with the U.S.S.R. (G. M. Gathorne-Hardy, *A Short History of International Affairs*, London, 1938, p. 372).

⁵ Adolf Hitler, *Mein Kampf*, Munich, 1930, p. 750 (English translation, London, 1939, p. 538).

⁶ The Prime Minister of the Ukrainian S.S.R. at the Eighth All-Union Congress of Soviets in Moscow, November 26th, 1936, in *Documents on International Affairs, 1936*, London, 1937, p. 301.

attitude between these two uncompromising antipodes, which found telling expression in Hitler's birthday telegram to Stalin: 'I beg you to accept on your sixtieth birthday my sincere wishes. I unite herewith my best wishes for your personal wellbeing and a happy fortune for the nations of our friends, the Soviet Union.'¹ To sum up this relationship in Hitler's words: 'Perhaps I shall not be able to avoid an alliance with Russia. I shall keep that as a trump card. . . . But it will never stop me from as firmly retracing my steps, and attacking Russia when my aims in the West have been achieved.'²

These experiences may offer a warning against over-estimating the importance of ideological differences and uniformities in the international sphere. Certainly, wide divergencies in religious, ethical, social and constitutional principles and standards of value divide countries, and homogeneity in these spheres and values draws countries together. It can also not be denied that ideologies offer effective chances to the propaganda departments of States capable and willing of making use of these weapons to weaken their adversaries by this subtle means of power.³ Only it must not be overlooked that, in those cases, the purpose of the undertaking is not so much the support of the faction in the other State for which sympathy is professed as that this ideological front is merely a convenient cloak for the real object, the weakening and disintegration of the adversary from within: 'I am concerned with power politics - that is to say, I make use of all means that seem to me to be of service, without the slightest concern for the proprieties or for codes of honour.'⁴ Even if other Statesmen may not be prepared to carry the conception of power politics to its logical conclusion as Hitler does, both in doctrine and practice, it seems certain that, in a society based on the rule of force, in the end, not sentimental sympathies and æsthetic preferences for the homogeneous structure of other countries, but much weightier considerations of State interests must be decisive.

Finally, it may be asked what functions are fulfilled by alliances, viewed from the standpoint of the international society as a whole? They are the compensation for an imaginary or real inferiority of a State as compared with a rival power. In the best case, their purpose is the maintenance of the existing state of affairs. More often an

¹ *The Times*, December 22nd, 1939.

² Rauschnig, *l.c.*, p. 136.

³ G. G. Bruntz, *Allied Propaganda and the Collapse of the German Empire*, London, 1938, and E. H. Carr, *The Twenty Years' Crisis*, London, 1939, pp. 172 *et seq.*

⁴ Hitler as reported by Rauschnig, *l.c.*, p. 270.

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alliance is an openly or at least secretly avowed aggressive combination. 'An alliance which is not for the purpose of waging war has no meaning and no value. Even though at the moment when an alliance is concluded the prospect of war is a distant one, still the idea of the situation developing towards war is the profound reason for entering into an alliance.'¹

If a given *status quo* can be upheld only because the State interested in its alteration fears the alliance rallied against it, organic development and growth is reduced to a contention which is decided mechanically by the sheer weight of the opposing forces. A concession is made dependent not so much on the intrinsic justice of a claim as on the decrease in prestige which the granting of the demand may involve. For the prestige of a country is the reflection of its power in the opinion of the world; it is 'potential victory in war, and may give actual victory without war'.² Furthermore, alliances over-compensate the feeling of isolation, fear and insecurity on the part of a State, and, therefore, such alignments give only additional momentum to the forces of anarchy and destruction which are in any case potent enough in a system of power politics.

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¹ Hitler, *l.c.*, p. 749 (English translation, London, 1939, p. 537).

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CHAPTER 9

FORMS OF POWER POLITICS

BALANCE OF POWER, POWER DIPLOMACY, AND WAR

The Balance of Power

It has been contended that in certain favourable circumstances the system of alliances and counter-alliances may produce a certain stability by achieving a balance of power. Any tendency alleged to contribute to the equilibrium in the international society would merit attention for this reason alone. In addition, special concentration on this topic seems justified, as the principle of the balance of power has in the past been always particularly closely associated with British foreign policy. Richard Cobden calls it 'a chimera. It is not a fallacy, a mistake, an imposture, it is an undescribed, undesirable, incomprehensible nothing'.¹ Compared with the definitions of Vattel,² Gentz³ or Brougham,⁴ Sir Eyre Crowe has given by far the clearest definition of the principle of the balance of power: 'The first interest of all countries is the preservation of national independence. It follows that England, more than any other, non-insular power, has a direct and positive interest in the maintenance of the independence of nations, and therefore must be the natural enemy of any country threatening the independence of others and the natural protector of the weaker communities. History shows that the changes threatening the independence of this or that nation has generally arisen, at least in part, out of the momentary predominance of a neighbouring State at once militarily powerful, economically efficient and ambitious to extend its frontiers or spread its influence, the danger being directly proportionate to the degree of its power and efficacy and to the

¹ Richard Cobden, *Political Writings*, London, 1903, Vol. I, pp. 197-8.

² M. de Vattel, *Le Droit des Gens*, Tome II, London, 1758, *Liv.* III, Chap. 3, § 47 *et seq.*, p. 39.

³ Friedrich von Gentz, *Fragmente aus der neuesten Geschichte des politischen Gleichgewichtes in Europa*, Leipzig, 1806.

⁴ Compare J. L. Kunz, 'Europäisches Konzert', in Strupp's *Wörterbuch des Völkerrechts*, Berlin, 1924, Vol. I, pp. 697 *et seq.*

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spontaneity or "inevitableness" of its ambitions. The only check on the abuse of political predominance derived from such a position has always consisted in the opposition of an equally formidable rival or of a combination of several countries forming leagues of defence. The equilibrium established by such a grouping of forces is technically known as the balance of power and it has become almost an historical truism to identify England's secular policy with the maintenance of this balance by throwing her weight now in this scale and now in that, but ever on the side opposed to the political dictatorship of the strongest single State or group at a given time.¹

Just as a system of alliances and counter-alliances is the necessary concomitant of any system of power politics in which more than two independent and armed States exist side by side, so the conception of the balance of power is a conception naturally congenial to this atmosphere. David Hume observes in his *Literary, Moral and Political Essays* on this point: 'Whoever will read Demosthenes' oration for the Megalopolitans, may see the utmost refinements on this principle that ever entered into the head of a Venetian or English speculatist. . . . In short, the maxim of preserving the balance of power is founded so much on common sense and obvious reasoning that it is impossible it could altogether have escaped antiquity where we find, in other particulars, so many marks of deep penetration and discernment.'²

The laboratory in which the principle of the balance of power was tried before its application on the plane of Europe and the world at large was the microcosm of Italy as it had developed by the fifteenth century. For a variety of reasons, the circumstances there were particularly favourable for policies based on this conception.³ First, the rather small size and town character of the Italian city States enabled the privileged oligarchy or the *Podesta*, the *Capitano del Popolo*, to exercise an amount of internal authority which the central power in the larger States of Europe could only achieve more gradually. Thus, a strong government, the indispensable internal complement of international power politics, was realized in these principalities at a time when, in other countries, the central power was still engaged in a life-and-death struggle with Church and nobility. Second, these

¹ Memorandum of January 1st, 1907, *British Documents on the Origins of the War*, London, 1928, Vol. III, p. 403.

² David Hume, *Essays Literary, Moral and Political*, London, 1875, pp. 199, 201.

³ Alberico Gentili, *De Jure Belli Libri Tres*, London, 1933, Vol. II, p. 65; Jacob Burkhardt, *Die Kultur der Renaissance in Italien*, Leipzig, 1925; Max Weber, *Wirtschaft und Gesellschaft*, Tübingen, 1922, pp. 546 *et seq.*; Alfred Weber, *Kulturgeschichte als Kultursoziologie*, Leyden, 1935, pp. 267 *et seq.*

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States were so much nearer to each other than the centres of the Holy Roman Empire, Spain, France or England, and thus frictions were felt more immediately, and insults taken still more seriously, than in the relations, delicate and touchy enough though they were, between the other European powers. Third, the Italian trade and handicraft centres of Florence, Milan, Naples and Venice were not so much based on agriculture as on industry and commerce, activities which promote closer contact between communities. Fourth, the type of man characteristic of the Renaissance period, creative but sceptical and strong but sophisticated, developed in this tense and quick-living environment more suddenly than in the outlying districts of Europe. There it took much longer to undermine and to eliminate the Christian standards of value which had given their stamp to the Middle Ages, and to replace them by the contemptuous conviction that 'in times like the present whatever a man sets his heart upon, be it the papacy, be it the empire or anything else, he has no means of obtaining his object except by force or corruption'.¹ The combination of these political, social, economic, geographical and psychological forces was responsible for the inter-Italian 'equilibrium' based on shifting alliances and counter-alliances which caused Machiavelli to look round for a unifier of his country 'so that Italy may at length find her liberator'.²

When, at the end of the fifteenth century, the ruler of Milan asked for French military assistance against Naples the Italian balance of power system was brought in contact with Europe at large. Not only were most of the Italian States involved in this war, but also the Holy Roman Empire, Spain and England became entangled. At the same time, the political preponderance within Italy changed from the city States into the hands of the Holy See, which, in the period between 1492 and 1521, became a European Greater power with aspirations indistinguishable from those of worldly princes.³ Thus, on Italian soil, foundations were laid for the European system of power politics.⁴ After the breakdown of Spanish hegemony, the rallying point was provided by France, who during the seventeenth and eighteenth centuries showed strong hegemonial tendencies culminating in the

¹ Francis' reply to Guilhart, the President of the *Parlement de Paris*, quoted by H. E. Blinn, *Henry VIII and the Imperial Election of 1519*, Pullmann, Washington, 1937, p. 27.

² Niccolò Machiavelli, *The Prince*, London, 1935, p. 119.

³ Leopold von Ranke, *Die römischen Päpste*, Munich, 1923.

⁴ Charles Dupuis, *Le Principe d'équilibre et le concert européen*, Paris, 1909, and L. Donnadieu, *Essai sur la théorie de l'équilibre*, Paris, 1900.

Napoleonic Empire. On the Continent the natural antagonist of that country was provided by the Hapsburgs. This rivalry found its counterpart on the sea in the antagonism against England. The stable elements in the European system of balance were, therefore, provided by the double antithesis of France *versus* the Hapsburgs and France *versus* England. Thus necessarily, Austria became the ally of this country. When Prussia, by its conquest of Silesia, challenged the Hapsburgs beyond the point of a compromise, and it became clear that England would not favour Prussia's disappearance as a Greater power, the famous change of allies of 1756, the *changement*, took place. In accordance with the arithmetical calculations of which the diplomacy of the eighteenth century was so fond, and into which the conception of the balance of power fitted so congenially, Vienna became the ally of Paris, and Prussia England's 'continental sword'.

Even during the eighteenth century, Europe did not yet form *one* activity area. There still existed two systems with certain contacts between each other which could not, however, be regarded as *one* single and coherent State system. The South-Western system to which Great Britain, France, Spain, Austria and, in a rather passive capacity, the Italian States belonged was only occasionally related to the North-Eastern system, in which the ascendant might of Russia acquired the place of a Greater power as the result of her successful war against Sweden, a war which significantly took place simultaneously with that of the Spanish Succession.¹

The integration of these two systems took place in the nineteenth century as the result of a variety of circumstances. First, the meteoric rise of Napoleon and the French domination of Europe drove home to Europe the advantages of the system of the balance, which had been applied since the Treaty of Westphalia of 1648, and was defined in the Peace Treaty of Utrecht in 1713 as '*ad firmandam stabiliendamque pacem ac tranquillitatem Christiani orbis justum potentiarum equilibrium*'. Second, the industrial revolution assisted in creating a consciousness of Europe as a whole. The increase in population, the improvement in means of communication, and the vast increase in industrial, commercial and financial relations between the European countries made it possible to conceive of Europe at least as *one* activity area. Third, as the example of Italy proved, the growth of nationalism all over Europe made it increasingly difficult to treat any part of Europe merely as an

¹ Compare, on the interrelationship between the two systems, Windelband, *l.c.*, pp. 174 *et seq.*

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object of the two European balance of power systems. The demand of each new entity to fulfil some kind of active function within the hierarchy of power further contributed to the creation of a contiguous political system over the whole of Europe.

Yet it would be wrong to assume that this principle was limited to Europe. It is universal wherever several States of more or less equal strength co-exist in a system of power politics.¹ As soon as the United States became 'confessedly the leading power'² on the American continent, the question necessarily arose: 'How a *European Congress* could discuss Spanish American affairs without calling to their Counsels a power so eminently interested in the result as the United States of *America*, while Austria, Russia and Prussia, powers so much less concerned in the subject, were in consultation upon it?'³ At the time when the Monroe Doctrine was pronounced the U.S.A. were not yet strong enough to divide the two hemispheres into two watertight compartments. Canning's statement, 'I called the New World into existence to redress the balance of the Old',⁴ expresses more realistically the then existing relations between the two continents. The common interests of Great Britain, which only sought free commercial opportunities in the South and Central American States, and of all American States in preventing America from becoming 'a theatre for the ambition and cupidity of European nations'⁵ excluded a development on this continent of the kind which took place in the latter part of the nineteenth century in Africa and Asia.

The African States, in their internal organization comparable with primitive feudal communities,⁶ could not resist the onslaught of European imperialism. As soon as *one* State began to increase its territory, resources and man power by expansion in the 'dark continent', the other States had either to resign themselves to this unilateral increase in power, an attitude inconceivable in any balance of power system, or had to strive for spheres of influence and colonies

¹ For the working of this principle in Central Asia, see *Digest of Diplomatic Correspondence, 1856-1871*, Berlin, 1932, Vol. I, p. 29, and in South America ('balance of the States of the Plata'), *ibid.*, pp. 63 *et seq.*

² George Canning (September, 1823), *The Cambridge History of British Foreign Policy*, Cambridge, 1923, Vol. II, p. 70.

³ Harold Temperley and Lillian M. Penson, *Foundations of British Foreign Policy*, Cambridge, 1938, p. 75.

⁴ December 12th, 1826, *Hansard*, London, 1827 (New Series, Vol. XVI), col. 397.

⁵ Mr. Sewart to Mr. Drayton (Paris), April 22nd, 1861 (*Digest of Diplomatic Correspondence, 1856-1871, l.c.*, Vol. I, pp. 66-7).

⁶ K. A. Wittfogel, *Geschichte der bürgerlichen Gesellschaft*, Vienna, 1924, pp. 107 *et seq.*

at a roughly similar rate. This is the essence of the principle of compensations which had found its precedents in the partitions of Poland and in the *pour-boires* which Napoleon the Third received for his toleration of Italian unification. This motive of expansionist policy in Africa and Asia comes out clearly in the Treaty of July 1st, 1898, between China and Great Britain regarding the lease of Weihaiwei. The lease was to last 'for so long a period as Port Arthur shall remain in the occupation of Russia'.¹ The European State system which controlled, to a certain extent, the all-round scramble for colonial expansion was also known as the Concert of Europe. As Gladstone pointed out in his speech on the 'Right Principles of Foreign Policy' on November 27th, 1879, 'the only objects for which you can unite together the powers of Europe are objects connected with the common good of them all'.² The diplomatic correspondence of this period offers a wealth of evidence as to what the powers regarded as the common denominator on which their diverging policies could be united.

Negatively, it can be said that neither the Peace Treaty of Vienna nor the later accords between the European powers were ever 'intended as a union for the government of the world, or for the superintendence of the internal affairs of other States'.³ In positive terms, Lord Russell's dispatch of July 7th, 1859, gives the current official interpretation of the functions of the European Concert: 'The balance of power in Europe means in effect the independence of several States; the preponderance of any one power threatens and destroys this independence'.⁴

The exaggerated opinions on the Concert, shared even by John Westlake,⁵ are a compliment to the foresight and moderation of the Congress of Vienna. The Statesmen assembled there, who had the wisdom to include amongst their number Talleyrand, the representative of the defeated disturber of the equilibrium, achieved as stable and wise a solution as can be realized within the orbit of a balance of power system. Therefore it can be understood that their successors were at pains 'to maintain inviolate those treaties on which the balance of power in Europe reposes',⁶ in spite of misgivings felt regarding minor aspects of this comprehensive settlement.

¹ W. W. Willoughby, *Foreign Rights and Interests in China*, Baltimore, 1927, Vol. II, p. 478.

² Edgar R. Jones (editor), *Selected Speeches on British Foreign Policy, 1738-1914*, London, 1924, p. 372.

³ George Canning in the House of Commons on April 30th, 1823, *Hansard*, London, 1823 (New Series, Vol. VIII), col. 1,483.

⁴ *Digest of Diplomatic Correspondence, i.e.*, Vol. I, p. 22.

⁵ John Westlake, *Collected Papers on Public International Law*, Cambridge, 1914, p. 101.

⁶ Earl Cowley to Earl of Malmesbury, February 6th, 1859, *ibid.*, p. 16.

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In order to reach a just valuation of the Concert, it must be remembered that it broke down on various occasions, particularly during the Crimean War, and that it subjected the smaller States to the despotism, though possibly benevolent, of the Pentarchy. On the credit side, a variety of activities can be recorded: the supervision of the emancipation of the Balkan States from Turkish rule, the neutralization of Switzerland (1815), Belgium (1839) and Luxembourg (1867), the development of international law by quasi-legislative enactments (organization of the diplomatic corps, control of international rivers, conventions regarding international communications, measures against the slave trade or the Declaration of Paris of 1856 regarding privateering, neutrality and blockade) and the regulation of the imperialist expansion of the European powers (the Congo Conferences of 1884 and 1890 and the Conference of Algenciras of 1906).

The European Concert did not interfere in the many duel wars which were fought in Europe between 1815 and 1914. In wars of this kind, which were only of minor interest from the standpoint of the European balance, the Concert contented itself with preventing those wars from spreading into general conflagrations between the Greater powers. The account given so far presents a too positive picture of the functions of the European Concert and any other balance of power system. For so far one essential dynamic element has been ignored, the grouping of the Greater powers against each other in alliances and counter-alliances, a grouping which is so euphemistically covered by the term 'Concert' implying, as it does, an harmonious team willing to play their instruments in common accord. As Bismarck remarked in a conversation with Sabouroff, a Russian diplomat, 'You too often lose sight of the importance of being three on the European chessboard. That is the invariable objective of all the cabinets and of mine above all: nobody wishes to be in a minority. All politics reduces itself to this formula: Try to be *à trois* as long as the world is governed by the unstable equilibrium of five Great powers'.¹ Actually, as G. Lowes Dickinson reminds us, any static interpretation of the term 'balance' falls victim to a confusion between the two meanings of this word: 'It means on the one hand an equality as of the two sides when an account is balanced, and on the other hand, an inequality as when one has a "balance" to one's credit at the bank.'²

¹ G. Lowes Dickinson, *The International Anarchy, 1904-1914*, London, 1937, p. 76.

² *ibid.*, p. 4.

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In the psychological atmosphere of the inter-State system¹ it is unlikely that rivalling groups of States rest content with achieving equality. As it is never certain whether an adversary has not at his disposal hidden resources and weapons, safety demands intelligent anticipation of such developments and renders it advisable to make double sure by being on the heavier side of the balance. As these mental attitudes do not remain limited to one country, the system of alliances and counter-alliances has a tendency to spread - it may be held up for a time, as in the latter part of the nineteenth century, by common expansion in spaces 'unoccupied' in terms of power politics - the armaments race increases its speed, the nerves of Statesmen and the reactions of a carefully manipulated public opinion become more and more highly strung, the major conflict is regarded as unavoidable and the only uncertain factor is the exact moment when brakes on the vehicles of power politics will give way. Thus it appears that the balance of power system is as unable as those other forms of power politics which have been investigated earlier, to achieve any durable stability in the international society. When it is argued that this conception has at least the advantage of making the foreign policy of the Greater powers more rational and calculable this may be admitted on a basis of relativity as compared with other methods of power politics. Yet even this claim seems fallacious from any other point of view.

States never seem able to agree how much weight they should have in order not to weigh down the scales unduly. Naturally each State tries to do its best. As, however, the capacity of exercising such pressure fluctuates the equilibrium must necessarily remain highly unstable. In addition, Statesmen dislike being regarded as dead-weights on either side of the scales. Therefore, they have a tendency to aim at the position in which they can hold the scales and apply to themselves the proud device of Henry VIII: '*Cui adhæreo, præest.*'² There is, therefore, continual movement within a balance system which in itself endangers 'the tranquility of Europe'³ even while concrete causes of war may be lacking. Furthermore, the idea of the balance of power is a physical and mechanical conception. It implies that the balance is unaffected if equal weights are added or taken away on both sides of

¹ Compare, above, Chaps. 7 and 8.

² Sir Geoffrey Butler and Simon Maccoby, *The Development of International Law*, London, 1928, p. 64.

³ Treaty between the European powers of July 6th, 1827, concerning the Greek question, Preamble, par. 4.

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the scales. Alberico Gentili compares the balance of power with a system of atoms. There, 'too, the maintenance of union among the atoms is dependent upon their equal distribution and on the fact that one molecule is not surpassed in any respect by another'.¹ The growth of nationalism, however, increasingly forbids such an approach. The soil and population of a nation is sacred and not a question of bargaining. The nation is a living and organic unit parts of which cannot be severed without endangering the existence of the whole. Thus, nationalism and the principle of national self-determination² cut across the rationalist idea of the balance of power and further complicate the conduct of power politics by the introduction of an additional irrational factor.

Power Diplomacy

The over-riding 'laws' of power politics are of such force and logic that the realization of this situation will prevent any detached observer from cheap gibes at the category of human beings whose function it is to administer the external affairs of the Leviathans and to represent them at the seats of power of their opposite numbers. Sir Ernest Satow defines the functions of diplomacy as 'the application of intelligence and tact to the conduct of official relations between the governments of independent States, extending sometimes also to their relations with vassal States'.³ Harold Nicolson adopts the definitions of the *Oxford English Dictionary*: 'Diplomacy is the management of international relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; the business or art of the diplomatist'.⁴

The degree to which diplomatic relations remain sporadic or become permanent is a safe indicator of the stage of integration which an international society has reached. As the need for close and permanent contact arose first within the inter-Italian State system, these States and the Papacy were the first to establish an orderly diplomatic service in the modern sense and to proceed to the establishment of resident embassies. As Nicolson observes, this change developed a new type of diplomatist. There was no longer such a need for the orator type, familiar from antiquity and the Middle

¹ Gentili, *l.c.*, Vol. II, p. 65.

² See, below, Chap. 21.

³ Sir Ernest Satow, *A Guide to Diplomatic Practice*, London, 1917, Vol. I, p. 1.

⁴ H. Nicolson, *Diplomacy*, London, 1939, p. 15.

Ages. The more rationalist 'trained observer' type made its appearance and served as a model for the modern diplomat.¹ Another feature of the history of diplomacy is equally important. Diplomatic envoys were originally representatives of the heads of States – as in law they still are – of kings and princes who conduct *their* foreign policy. When the foreign 'secretaries' gradually became ministers responsible to parliaments the diplomats had to be subordinated to them if the parliamentary responsibility of foreign ministers were not to be a mere matter of form.² Finally, the growing integration of the international society and the specialization of modern life still further affected the type of the diplomatic envoy. While in all European countries, apart from the U.S.S.R. – and even there a few members of the Czarist Foreign Office survived the cataclysm – the percentage of the nobility in the diplomatic service is out of all proportion compared with other classes, this general trend counteracted the tendency here and on the Continent to regard the Foreign Office as 'the last choice preserve of administration practised as a sport'.³

An example from the eighteenth century may show how much the tempo of diplomacy has increased, keeping in step with the quickened pace of modern life. In June, 1721, Great Britain, France and Spain decided to hold a Peace Conference at Cambrai. After more than half a year, the diplomatic representatives began to assemble. Two years later, the Conference was formally opened and started its work. After fourteen months of discussions, the Spanish plenipotentiary withdrew, and two months later the congress broke up without having achieved any result.⁴ In this case, or in that of the Disarmament Conference,⁵ the apparent absence of initiative, and insistence on the discussion of minor points, is not so much the result of negative qualities on the part of the diplomats chosen for this purpose, but it is the expression of an absence of unity of purpose on the part of the powers co-existing side by side in a system of power politics. Equally, the secretiveness usually associated with diplomats is essentially due, not to their natural shyness or cant, but is an inherent element of power politics. It is not implied in this statement that public diplomacy, if such a combination is possible at all, is likely to be superior to diplomacy as practised hitherto. The idea that the representatives of

¹ H. Nicolson, *Diplomacy*, London, 1939, pp. 9 *et seq.*

² *ibid.*, pp. 80 *et seq.*, and Butler-MacCoby, *l.c.*, pp. 73 *et seq.*

³ *The Cambridge History of British Foreign Policy*, Cambridge, 1923, Vol. III, p. 540.

⁴ *The Cambridge Modern History*, Cambridge, 1909 (Vol. VI), p. 57.

⁵ Compare, below, Chap. 18.

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nations should publicly shout at each other as Hitler and Stalin have done in past years, to the excitement of their followers and the amusement of the world at large, is certainly not an improvement on the traditional lines. Yet the essential feature is that power politics *cannot* be conducted except by means of secret diplomacy and gentlemen's agreements.

Yet it can hardly be conceived that negotiations of the type, as, for instance, the U.S.S.R. were carrying on in the course of 1939 simultaneously with the Western powers and Nazi Germany, could be conducted in accordance with Wilson's postulate that 'diplomacy shall proceed always frankly and in the public view'.¹ It is not astonishing that those Statesmen who pursue the game of power politics most consistently and logically have also the lowest opinion of the functions of the diplomatist. In Hitler's own words, 'an efficient ambassador must be a master of ceremonies; at all events, he must be able to work as procurer and forger. The least of all his duties is to be a correct official'.² While generalization from the line taken by Hitler and Stalin may be unjustified, the dividing line between legitimate information and the backstairs methods of diplomacy cannot be too rigid in a system in which national self-interest is the ultimate test of moral right and wrong.³ In a system of power politics diplomacy must necessarily be power diplomacy. So long as these underlying conditions prevail there cannot be an essential difference between 'old' and 'new' diplomacy in the sense that 'the new diplomacy is not one between government and government, but between people and people'.⁴

Such differences as exist appear to be due to the influence of technical inventions upon the methods of diplomacy. Improved means of communications and rapidity of the transmission of news give increased control to governments over their emissaries and diminish the amount of discretion which they formerly enjoyed. In addition, the means of information which, for instance, newspapers with a world-wide circulation enjoy have altered the relations between official and unofficial agencies of news. It is reported of a famous journalist that after a long conversation he left the ambassador of his

¹ Point One of Wilson's Fourteen Points (January 8th, 1918).

² H. Rauschning, *Hitler Speaks*, London, 1939, p. 269.

³ Compare *The Cambridge History of British Foreign Policy, L.c.*, Vol. III, p. 618, Harold D. Lasswell, *World Politics and Personal Insecurity*, New York, 1935, pp. 150 *et seq.*, and F. Schuman, *War and Diplomacy in the French Republic*, New York, 1935, p. 395.

⁴ Lord Robert Cecil in the First League Assembly, *Plenary Meetings*, 1920, p. 279. See also R. B. Mowat, *Diplomacy and Peace*, London, 1935, pp. 7 *et seq.*

country sadly disappointed and remarked to his colleagues: 'If only once I could find an ambassador who answered questions instead of asking them.'¹ Post-1919 diplomacy has been favourably compared with diplomacy in the pre-1914 period. 'Diplomacy in 1914 rapidly lost control of the situation. The march of events, in military timetables and mobilization, outstripped the inter-communication of the powers, although the majority of the interested Great power governments almost certainly wanted and worked to avert war, and yet were unable to do so.'² In spite of the improved technical opportunities which existed in 1939 compared with those of 1914, the results were curiously alike. The answer to this riddle depends on the understanding of the functions fulfilled by war in the international society.

War

An appropriate opening for an examination of the phenomenon of war may be provided by the words of Signor Mussolini, who, in view of his responsibility for the 'pacific' bombardment of Corfu by the Italian fleet and the conquest of Abyssinia, can at least claim the virtue of consistency in word and deed: 'In spite of all conferences, all protocols, and all the more or less high and good intentions, the hard fact of war may be anticipated to accompany the human kind in the centuries to come, just as it stands on record at the dawn of human history.'³ Mussolini's attitude to war differs only in emphasis from the numerous statements on the nature of war to be found in nineteenth-century State documents and official speeches in which war was frequently referred to in euphemistic terms, such as 'a misfortune, which, if not necessary, can at least sometimes not be avoided'.⁴ The Hague Convention on the Laws and Customs of War on Land of October 18th, 1907, contains in its preamble the following passage: 'Seeing that while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary

¹ Virginia Cowles, 'Getting the News in Foreign Crises', *The Sunday Times*, October 30th, 1938.

² R. B. Mowat, 'Diplomacy and the Crisis', in *The New Commonwealth Quarterly*, 1938 (Vol. IV), p. 255.

³ *The Times*, August 18th, 1934. See also Benito Mussolini, *La Dottrina del fascismo*, Milan-Rome, 1932, in which the author denies 'the possibility and usefulness of eternal peace'.

⁴ Passage in the Instructions to the Russian delegate to the Brussels Conference of 1874 (*Fontes Juris Gentium*, Series B, Sectio 1, Tomus II, Pars 3, Berlin, 1938, p. 74). Other examples are mentioned by Alexander Hold-Ferneck, *Lehrbuch des Völkerrechts*, Leipzig, 1930, Vol. I, p. 106.

to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert.'

The existence of forces beyond human control regulating the relations between individuals and groups cannot be denied, but, *prima facie*, it behoves the student of social relations to approach warily metaphysical or biological explanations,¹ provided there is a possibility of an intelligent interpretation of social phenomena by factors immanent in the group relation in question. We may be inclined to turn directly for assistance to those authorities on international law who have presented the world with a variety of definitions of war. It is, however, only too obvious that neither before nor since the World War has international law very successfully attacked this problem if we assign to the word 'war' what Mr. Justice Goddard has called its 'coarser meaning', and understand by it a state of affairs in which there is 'an armed conflict between competing nations'.² Nor, as it was stressed in the decision of the Court of Appeal which upheld Mr. Justice Goddard's findings, do writers on international law 'speak with one voice . . . it is not difficult to find extensive inconsistencies in their definitions of war'.³

It seems advisable, therefore, to postpone the analysis of the exploits of legal thought until they can be considered in the light of an investigation into the social functions fulfilled by war in the inter-State system.⁴

There have been various attempts to analyse war as a social institution and to explain the functions of this 'barbarous procedure'.⁵

(a) War as an instrument of historical evolution (William Graham Sumner,⁶ Alexander Hold-Ferneck,⁷ Edwin M. Borchard⁸ and Karl Schmid⁹).

¹ See particularly Hegel's *Vorlesungen über die Philosophie der Geschichte*, Berlin, 1837. An extreme representative of the latter school is Friedrich von Bernhardi (*Germany and the Next War*, London, 1914, pp. 16 *et seq.*). See also the excellent survey by Frank M. Russell, *Theories of International Relations*, New York, 1936, pp. 244 *et seq.*, and Max Scheler, *Die Idee des Friedens und der Pazifismus*, Berlin, 1931, pp. 13 *et seq.*

² *Kawasaki Kisen Kaisha v. Kaisha of Kobe v. Bantham S.S. Co. Ltd.* (1938), 3 All E.R. 84.

³ L.R. (1939) 2 K.B. 556.

⁴ For an analysis of the various directions from which the study of war can be approached, see Quincy Wright, *The Causes of War and the Conditions of Peace*, London, 1935, pp. 6 *et seq.*

⁵ Georges Scelle, *Précis de Droit des Gens*, Paris, 1932, Vol. II, p. 43.

⁶ *War and Other Essays*, New Haven, Conn., 1911, pp. 3 *et seq.*

⁷ *L.c.*, Vol. II, p. 251.

⁸ 'The Arms Embargo and Neutrality', in *The American Journal of International Law*, 1933 (Vol. 27), p. 296.

⁹ 'Gedanken zum Problem einer allgemeinen internationalen Gerichtsbarkeit', in *The New Commonwealth Quarterly*, London, 1938 (Vol. III), pp. 343 *et seq.*

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(b) War as an agency promoting or retarding social progress (Karl Pearson,¹ Peter Kropotkin²).

(c) War as a method of expansion (Morris Ginsberg³).

(d) War as a quasi-legal institution or as a *pis aller* in the absence of proper international organs:

(1) as a means of settling inter-State disputes (William Ladd,⁴ Heinrich von Treitschke⁵ and Erich Kaufmann⁶);

(2) as a means of self-help peculiar to international law ('The German Supreme Court⁷ and Hans Kelsen⁸);

(3) as a means of change in the absence of adequate international organs (Sir John Fischer Williams⁹);

(4) as a phenomenon comparable to civil war (Baron Jomini¹⁰) or revolution (J. L. Brierly¹¹ and E. Reut-Nicolussi¹²).

(e) War as a probable or even inevitable consequence of the tendencies inherent in the economic and political system of imperialism, the present phase of capitalism (Marxist writers such as Rosa Luxemburg¹³ and Lenin¹⁴).

It would be beyond the scope of this examination to discuss each of these doctrines fully, but a few comments on some of them seem indispensable.

In the first place, some of the above analogies to municipal law seem artificial, for although they may appear adequate in some instances they do not apply at all in others. As early as 1891, Hugo Preuss¹⁵ observed that it is hard to ascribe to war functions comparable

¹ *National Life from the Standpoint of Science*, London, 1911, pp. 34 *et seq.*

² *Mutual Aid: A Factor of Evolution*, London, 1914, particularly pp. 222 *et seq.*

³ *Sociology*, London, 1937, p. 139.

⁴ *An Essay on a Congress of Nations*, New York, 1916, pp. 150 *et seq.*

⁵ *Politics*, London, 1916, Vol. I, pp. 65-6.

⁶ *Das Wesen des Völkerrechts und die 'clausula rebus sic stantibus'*, Tübingen, 1911, p. 153.

⁷ *Entscheidungen des Reichsgerichts in Strafsachen*, 16, p. 165.

⁸ *The Legal Process and International Order*, London, 1935, pp. 11 *et seq.*

⁹ *International Change and International Peace*, Oxford, 1932. See also Joseph L. Kunz, 'The Problem of Revision in International Law', in *The American Journal of International Law*, 1939, Vol. 33, p. 33.

¹⁰ At the Brussels Conference of 1874 Baron Jomini drew a comparison with the American Civil War (*l.c.*, note 4, p. 128, above, p. 75).

¹¹ 'International Law and Resort to Armed Force', *The Cambridge Law Journal*, 1932 (Vol. IV), p. 318.

¹² *Die Wandlung des Krieges vom Rechtsverhältnis zur Revolution. Sonderabdruck aus der Festschrift für Dolenc*, Innsbruck, 1937. See also Kunz, *l.c.*, p. 33, note 4.

¹³ *Die Akkumulation des Kapitals: Ein Beitrag zur ökonomischen Erklärung des Imperialismus*, Leipzig, 1921.

¹⁴ *Imperialism. The Last Stage of Capitalism*, London, 1928.

¹⁵ *Das Völkerrecht im Dienste des Wirtschaftslebens*, Berlin, 1891, pp. 17 *et seq.*

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to those fulfilled in a national community by self-help. Not only is its scope here strictly limited by legal rules, but the community itself superintends the method by which self-help is applied and the injured party can invoke the assistance of the courts if his opponent oversteps the bounds of his rights. Thus there exist in the municipal sphere safeguards sufficient for the maintenance of the exceptional character of this particular right and for the prevention of serious abuses. None of these guarantees are, however, provided by international law, and what is an exception in municipal law becomes a rule in the international society – i.e. in matters 'solely within the domestic jurisdiction of a State each State is sole judge'.¹ Viewed in the light of State practice, it is still more difficult to regard the principle of self-help as an adequate explanation of war. For instance, Article 2 of the Treaty between Great Britain and Japan of 1902 provided for the neutrality of the one State if the other signatory, 'in defence of its respective interests, should become involved in war with another power'. Is it possible to regard resort to war in these circumstances as self-help without being guilty of a distortion of the facts?

Similarly, the analogy to civil war and revolution may prove misleading as it tends to imply that war is of an exceptional and abnormal character, a conclusion which – to judge from State practice – is not warranted by the facts.²

The value of these arguments is also affected by a further deficiency which causes the main function of war between States to be obscured. Their sponsors do not seem to take sufficiently into account the special character of the international society and tend therefore to isolate war from other forms of pressure, which are only different degrees in an ascending scale which culminates in war. Power diplomacy employs the weapons most effective in a system ultimately governed by the rule of force. These are persuasion, if sufficient, and if necessary, pressure in its various forms and degrees. In some cases a State, or combination of States, may be powerful enough to achieve the desired end without the express threat of pressure in any form, whereas, in others, pressure, short of resort to armed force, may be required (retortion and non-military reprisals). Yet other circumstances may induce a State to take measures involving the use of armed force which does not actually amount to war (military

¹ The Permanent Court of International Justice in its Advisory Opinion of February 7th, 1923, with regard to the Nationality Decrees issued in Tunis and Morocco, Series B.4, p. 23.

² On the question of periods of fluctuation between war and peace, see Quincy Wright, *L.c.*, 1935, pp. 21 *et seq.*

reprisals), or, finally, when all other methods of power diplomacy fail, a State may feel obliged to resort to war.

It follows that war, in a system of power politics, does not fulfil functions essentially different from those of diplomacy and the other forms of pressure described above. Clausewitz's well-known aphorism that war is politics continued by other means is, indeed, an apt and realistic description of the functions of war in a system of power politics.¹ F. L. Schuman has equally succinctly described war as 'diplomacy by another name and with a different technique',² and Liddell Hart defines strategy as 'the distribution and transmission of military means to fulfil the ends of policy'.³

If war is to remain a means to an end, strategy must acknowledge the superiority of foreign policy. The classic statement of this necessity is Bismarck's *Immediatbericht*⁴ to the King of Prussia, in which he demanded categorically that 'war should be conducted in such a way as to make peace possible' and maintained that it was his task to decide, in accordance with the effects and results of the conduct of war, what could be gained by concluding peace.

Thus we reach the conclusion that war is only the culminating point in a rising scale of pressure, the last resort of power politics when diplomacy fails to achieve its objects by the threat of force or the application of less drastic forms of pressure.

An investigation into the causes and objects of war cannot, therefore, succeed if it does not take account of the extreme complexity of the phenomenon of 'power'. There are as many causes and objects of war as there are motives and forces for the establishment and maintenance of a system of power politics in the international society.⁵

It could be argued that this interpretation of the functions of war unduly minimizes the importance of its economic causes. The struggle for raw materials and markets, and the resultant friction, is an aspect of the problem which is certainly of the utmost importance. It must be realized that governments, as distinct from sectional economic

¹ See *Hinterlassene Werke*, Berlin, 1932, Vol. I, pp. 26 *et seq.*; Vol. III, pp. 139 *et seq.* On the relationship between strategy and the objects of the Silesian Wars, compare Clausewitz, *Politische Schriften und Briefe*, Munich, 1922, pp. 195 *et seq.*

² F. L. Schuman, *International Politics*, New York, 1937, p. 507.

³ Liddell Hart, *When Britain goes to War*, London, 1935, p. 80.

⁴ *Fontes Juris Gentium*, Series B, Sectio 1, Tomus 1, Pars 2, Berlin, 1938, pp. 91 *et seq.*

⁵ On the causes of war, see James T. Shotwell, *War as an Instrument of National Policy*, London, 1929, pp. 8 *et seq.*; Arthur Porritt (ed.), *The Causes of War, i.e.*, 1935, pp. 126 *et seq.*; E. F. M. Durbin and others, particularly Ivor Thomas, *War and Democracy*, London, 1938, pp. 153 *et seq.*

interests, covet raw materials and markets, not as a potential source of profit, but because of their importance as war materials likely to prove valuable assets in the universal struggle for power. From this standpoint, a policy of politico-economic expansion may be advisable or even indispensable in a system of power politics, more especially for States which cannot claim to have achieved a high degree of self-sufficiency. This fact, far from disproving our point, seems to strengthen the thesis that these economic interests owe their present prominence to their connection with, and prominence within, a system of power politics. On the other hand, it is hard to deny that the attitude prevailing in our economic system is not congenial to the state of mind predominant in an international society based on the rule of force. In the words of Sir Alfred Zimmern, who refers to the War of 1914, 'capitalism and the philosophy of self-interests on which it reposes were intimately connected with the atmosphere of selfishness and domination which made the war possible. The two sets of causes, political and economic, lay mouldering together beneath the crust of European society. When one erupted, it should have been possible to foresee that it would bring the other with it to the surface'.¹

It has also been contended that war can no longer fulfil its original function in an age which has witnessed at least a technical integration of the international society.² Duel wars, such as were the majority of the wars in the eighteenth and nineteenth centuries, were occasioned by relatively concrete issues, and, apart from the exceptional cases which ended in the *debellatio* of one side, they led to a 'more or less satisfactory compromise solution of the question at issue'.³ On the other hand, the Napoleonic and World wars are quoted as precursors of the wars that may be expected when, in Litvinov's words, peace and war have become indivisible. Wars of this type can only be 'justified retrospectively'⁴ and are for this very reason still less calculable than

¹ *Nationality and Government*, London, 1918, pp. 384 *et seq.* See also Max Weber, *l.c.*, pp. 623 *et seq.*; Eugene Staley, *War and the Private Investor*, New York, 1935; Quincy Wright, *l.c.*, 1935, pp. 28 *et seq.*; David Mitrany, 'Interrelation of Politics and Economics in Modern War', in *The Annals of the American Academy of Political and Social Science*, Philadelphia, 1937, pp. 82 *et seq.* For the Marxist point of view see Otto Bauer, *Zwischen zwei Weltkriegen?*, Bratislava, 1936.

² Ernst Jäckh, 'Welt-Zeit', in *The New Commonwealth Quarterly*, 1935 (Vol. I), pp. 8 *et seq.*; see, however, Arnold J. Toynbee's warning against the danger of overestimating this phenomenon, 'which is really still recent and which may prove to be transient' (*A Study of History*, London, 1934, Vol. I, pp. 150-1).

³ Guglielmo Ferrero, 'Forms of War and International Anarchy', in *The World Crisis*, London, 1938, p. 92.

⁴ *ibid.*, p. 87.

isolated wars.¹ As Sir Edward Grey said in the House of Commons² on the eve of Britain's entry into the World War: 'We are in the presence of a European conflagration; can anybody set limits to the consequences that may arise out of it?'

It must be admitted that at a time when there exists either a world balance or a collective system which extends over the greater part of the world, but has not yet gained relative universality in the sense that it includes all the 'key' powers,³ there is a grave danger that purely local disputes may develop into world-wide conflicts. But the most this argument implies is that any State launching a war in the hope that it will remain isolated runs a very real risk of setting fire to a universal conflagration. Nevertheless, even before the breakdown of the Covenant and Kellogg Pact, local wars have occurred and have remained isolated. Moreover, granted that the use of war as 'an instrument of *rational* world politics has declined',⁴ the inter-State system contains, particularly at present, numerous imponderabilia which function according to norms entirely different from those which govern rational calculation.

Similarly, experience has revealed the fallacy of the view that the unprecedented development of the technique of warfare would entail the *reductio ad absurdum* of war as an instrument of national policy.⁵ In the first place, the inventions of the last twenty years are hardly more revolutionary than was the discovery of gunpowder, which certainly did not dissuade Statesmen from resorting to war. Second, in certain cases the advantages of modern technique are not equally at the disposal of all belligerents, and the overwhelming superiority created by this discrepancy in technical development may act as an inducement to expansionist powers to turn the situation to their own advantage. Third, even when the industrial and technical strength of countries is more or less equally balanced, one State or group of States may be less prone than its opponents to make use of destructive weapons. Nor must undue importance be attached to the argument

¹ J. C. Bluntschli, *Das moderne Völkerrecht der Zivilisierten Staaten als Rechtsbuch dargestellt*, Nördlingen, 1878, par. 536, stresses this point even with regard to an isolated war such as the Franco-German War of 1870-1. See particularly Shotwell, *l.c.*, p. 34, and Lasswell, *l.c.*, p. 206.

² August 3rd, 1914, *Hansard, House of Commons* (5th Series, Vol. LXV), col. 1,816.

³ See the present writer's *The League of Nations and World Order. A Treatise on the Principle of Universality in the Theory and Practice of the League of Nations*, London, 1936, pp. 177 *et seq.*

⁴ Quincy Wright, *l.c.*, 1935, p. 46.

⁵ See particularly H. A. Smith's observations on this question in *Le Développement moderne des Lois de la Guerre Maritime*, reprint from *Recueil des Cours de l'Académie de Droit International*, Paris, 1939, pp. 9 *et seq.*

that another general conflagration will destroy the inter-State system and civilization as a whole. Even assuming that a major war is a pathological phenomenon, viewed from the standpoint of the inter-State system, an appeal to prevent its outbreak in the interest of the general good would hardly impress those vigorous and dynamic States which are bent on following the dictates of untrammelled self-interest and *raison d'état*.

These arguments are worth considering because they represent beliefs current among those who have the future of the international society at heart. Although they are products of an easily comprehensible attitude they are dangerous. Wishful thinking of this kind may overestimate the importance of tendencies which, in the absence of sufficiently strong forces in the actual inter-State system, may more or less automatically bring about the desired results. It is a state of mind in many ways comparable to the thought-process prevalent, for example, amongst the supporters of 'revisionist' socialism, and one which psychologists can probably detect in most movements aiming at what their sponsors regard as an improvement of the existing situation.

The types of behaviour of the Leviathans in the international society which can be regarded as typical, isolation, armaments, alliances, balance of power, power diplomacy and war, fit perfectly into the pattern of international anarchy, a description which a recent writer has called, as it seems with undue harshness, a 'popular cliché'.¹ Unfortunately, both this term and its synonym, the rule of force, describe only too well a perennial state of affairs which is marked by the predominance of force in the inter-State system. Unlike its classification, the facts are unquestionable, and though the qualification is drastic it seems to fit.

The point which is essential is that in a system ultimately based on the rule of force, peace is chronically threatened by the existence of this weapon of national policy. In such circumstances, peace can only be defined by reference to war. For, as Hobbes says,² 'Warre consisteth not in Battell onely, or in the act of fighting; but in a tract of time, wherein the Will to contend by Battell is sufficiently known: and therefore the notion of Time is to be considered in the nature of Warre; as it is in the nature of Weather. For as the nature of Foule

¹ G. M. Gathorne-Hardy, *A Short History of International Affairs, 1920-1938*, London, 1938, pp. 3-4.

² *Leviathan*, Oxford, 1929 (Chap. 13), p. 96.

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weather, lyeth not in a showre of rain; but in an inclination thereto of many dayes together: so the nature of Warre consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is Peace.'

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CHAPTER 10

THE FUNCTIONS OF INTERNATIONAL LAW

OUR investigation into the development and structure of the international society has led us to the conclusion that force is the supreme 'law' of the international society. This does not necessarily imply, however, that the rule of force has achieved, or that it even aims at, exclusiveness; perhaps within its framework international law fulfils certain functions which it is our purpose to consider in this chapter.

Experience has shown that the function of international law as actually practised (in contrast to the laudable aspirations of text-book writers who do not always clearly distinguish between the law as it is and the law as it should be) is hardly to condition the rule of force or even to achieve priority in case of conflict between the two systems. However, the subordination of the legal system of the international society to this higher 'law' may have various implications. Either its scope may merely be conditioned without there being any further interrelationship between the two systems, or it may be completely or in part subservient to the rule of force.

This may or may not be a welcome conclusion, but the first duty of research is to discover the truth, pleasant or unpleasant, and, even if it is justified, it does not touch upon the conception of the rule of law.¹ On the contrary, it may help to bring this ideal nearer to realization. For nothing could be more detrimental to the final victory of law and justice than the glorification of a defective legal system.

Paradoxical as it may seem, the fundamental conceptions of international law can best be understood if it is assumed that they maintain and support the rule of force. A few examples may serve as evidence of this theory.

It has been shown in a previous chapter² how the conception of

¹ See Max Huber, *Beiträge zur Kenntnis der soziologischen Grundlagen des Völkerrechts und der Staatengesellschaft*, Berlin, 1928, and Dietrich Schindler, 'Contribution à l'étude des facteurs sociologiques et psychologiques du droit international', in *Recueil des Cours de l'Académie de Droit*.

² See, above, Chap. 4.

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State sovereignty 'with which almost all international relations are bound up',¹ limits international law to a degree which condemns it to sterility in decisive issues between States. This particularly applies to the problem of peaceful change, which in inter-State relations can only be achieved with the consent of all the interested parties.²

The exclusion of the individual from the realm of international law provides yet another example of its auxiliary position in relation to the rule of force. Only in exceptional cases has the express or implied will of States granted to individuals, or to groups other than States, a position comparable to their own within the sphere of international law.³ Normally States alone are recognized as subjects of international law, and the members of international organs are on an average merely representatives of their own States.⁴ The existence within the international society, however, of an organization in which delegates of, say, professional groups sit at the same table with, and perhaps even vote against, the representatives of their own governments, has been proved to be entirely feasible, as the successful working of the International Labour Organization shows.⁵ Nevertheless, there is a remarkable readiness among writers on this subject to declare that any further development in this direction is not only undesirable but incompatible with the fundamental principles of international law.⁶ The reason is not far to seek. Such arguments are the products of the outlook which has only distrust for ideas, such as, for instance, the abolition of secret diplomacy. True, public procedure is neither invariably feasible nor desirable even in a community proper, since any business carried out in public always seems to require more than ordinary tact. However, this is not why the idea of open diplomacy, i.e. public criticism of international treaties and undertakings, or

¹ The Permanent Court of Arbitration in the case between the Netherlands and the U.S.A. concerning the sovereignty over the island of Palmas, XIX. p. 17.

² See, above, Chap. 9 and, below, Chap. 16.

³ See the Advisory Opinion of the Permanent Court of International Justice on the Jurisdiction of the Courts of Danzig, March 3rd, 1928, Series B.15, p. 17, and, below Chap. 22.

⁴ Compare the Advisory Opinions of the Permanent Court of International Justice on the question of the German Settlers in Poland (September 10th, 1923, Series B.6, p. 22) and on the *Mosul* case (November 21st, 1925; Series B.12, p. 29).

⁵ Compare C. W. Jenks, 'The Significance for International Law of the Tripartite Character of the International Labour Organization', in *Transactions of the Grotius Society*, London, 1938 (Vol. 22), pp. 45 *et seq.*

⁶ See the literature quoted above in Chap. 4, pp. 70-1, and practically the whole of Nazi writings on international law. A convenient survey is contained in E. Bristler, *Die Völkerrechtslehre des Nationalsozialismus*, Zürich, 1938.

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the participation of the citizen in the day-to-day work of inter-State relations, receives a tepid reception in the circles in which diplomacy – the public property of a select few – secrecy and exclusiveness are considered as interchangeable terms. The real reason becomes plain if we imagine the working of a system of power politics in which the ordinary citizen was allowed to follow the development of specific cases, to appreciate the real motives for diplomatic action, or even to take part in the routine work of international administration. The whole system of power politics would inevitably break down under the public gaze. It is not, therefore, the damaging effect of publicity itself on international relations which makes necessary the restriction of democratic control and is directly responsible for the exclusiveness of diplomacy and of those who regard international law as the *domaine réservé* of the Leviathans, but rather the indissoluble bond between power politics and secret diplomacy. Hence international law, in so far as its representatives stress its character as an inter-State law not only as a fact but as a necessity, helps to lay the smoke screen which hides from the public the true reason for the undesirability of democratic control in the foreign sphere, and for the exclusion of the individual from the calm of international law and relations.¹

The problem is, admittedly, at present complicated by the simultaneous existence of democratic and totalitarian States. As a rule the latter seem to pursue a far more unfettered policy of power politics than the former, which are, even in foreign affairs, still to some extent controlled by the electorate and its representatives. Although this situation may temporarily delay progress, the contrast between the two types of State only emphasizes the salutary effect of even the small measure of popular control which is to be found in the modern democracies.

Thirdly, a study of political treaties proves still more conclusively the close connection between the spheres of law and force. The international law of peace has for three centuries stabilized the equilibrium which had been achieved by force in the fundamental peace treaties concluded between 1648 and 1919.² The same function is performed by the treaties of guarantee and neutralization destined to supplement and maintain a balance system, and by the other agree-

¹ See, above, Chap. 9, text to note 5, p. 126, and notes 1, 2, p. 127.

² See E. Wolgast, 'Die Verfassungen Europas', in *Völkerbund und Völkerrecht*, 1936 (Vol. 3), pp. 251–2, and the argument contained in the opinion by the Advocate-General to the Earl of Halifax, November 30th, 1764, in H. A. Smith, *Great Britain and the Law of Nations* London, 1932 (Vol. I), p. 3.

ments, such as alliances and treaties of mutual assistance, which are generally classified as political treaties.¹

Why should understandings of this kind invariably be couched in legal phraseology? To take as an illustration Article 3 of the Treaty of Alliance between Germany and Austria-Hungary of October 7th, 1879: 'This treaty will be kept secret in accordance with its pacific character and in order to exclude any misinterpretation.' If the treaty is to remain secret, it is unlikely that such wording is intended to impress public opinion, although it may, of course, have been influenced by the desire to prove the innocence of the document in case premature publication should be made inevitable by unforeseen circumstances, or by the hope of impressing the future historian when the need for secrecy is past. It is, however, more probable that the legal form of such documents is intended to give them additional weight and dignity in the sphere of power politics amongst the signatories themselves. Although the value of legal clauses in a system of power politics should not be exaggerated, and although, according to Bismarck, 'the contracting parties must trust one another that, when the case arises, the question will be loyally weighed and decided by the other party',² the legal bond decreases the noncommittal character of such liaisons and gives them the appearance at least of stability.

The dignity with which legal forms invest *de facto* situations resulting directly from the application of force is especially valued by States when the time comes to secure the spoils of victory and conquest. Leaving aside exceptions, such as the special obligations undertaken under Article 10 of the Covenant by members of the League, and declarations of policy such as the Stimson doctrine and the corresponding resolution of the Assembly conveniently ignored by the powers which granted legal recognition to Italy's conquest of Abyssinia,³ we are faced by a strange paradox. On the one hand, international law leaves States the freedom to resort to force; on the other, it grants legal recognition to the spoils gained by force.⁴

Similarly, an almost universally recognized legal principle according to which coercion invalidates a treaty or renders it liable to repudiation does not apply in international law.⁵ The reason is obvious.

¹ Arnold D. McNair, *The Law of Treaties*, Oxford, 1938, pp. 369 *et seq.*

² G. Lowes Dickinson, *The International Anarchy, 1904-1914*, London, 1937, p. 80.

³ See H. Lauterpacht, 'Règles Générales du Droit de la Paix', in *Recueil des Cours de l'Académie de Droit International*, Paris, 1937, tome 62, pp. 281 *et seq.*

⁴ Oppenheim-Lauterpacht, *International Law*, London, 1935, Vol. II, pp. 470 *et seq.*

⁵ McNair, *l.c.*, pp. 129 *et seq.*

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In a system of power politics there can be no peace which is not the outcome of war and of an imposed settlement. The function of international law, which differs from municipal law on this crucial point, is therefore limited to granting legal inviolability to any equilibrium achieved by force in order to make possible a minimum of stability in the international society.

Finally, international law provides quasi-legal excuses for political measures which are incompatible either with the sovereignty and equality of States – principles of the same legal system – or with contractual obligations, if the binding character of the latter is judged according to the standards of municipal law.

Political action incompatible with the principles of sovereignty and equality has conveniently been described as intervention, reprisals and pacific blockade. Sir William Harcourt's theory that the essence of intervention is illegality and that its justification lies in its success applies to many of these cases.¹ This statement may seem exaggerated in a legal system in which parties are obliged to take the law into their own hands, but no exception can be taken to Brierly's summing up: 'Practice on the matter has been determined more often by political motives than by legal principles.'²

Similar deficiencies are noticeable in State practice concerning the principles of self-preservation, self-defence, necessity and the *clausula rebus sic stantibus*. Confronted with the conflicting demands of political treaties and self-interest, a State may find itself in a dilemma. Such a situation was described with sympathetic understanding by Palmerston in his defence of Austria in 1849: 'Austria has been our ally. We have been allied with Austria in most important European transactions, and the remembrance of the alliance ought undoubtedly to create in the breasts of every Englishman, who has a recollection of the history of his country, feelings of respect towards a power with whom we have been in such alliance. It is perfectly true that in the course of those repeated alliances Austria, not from any fault of hers, but from the pressure of irresistible necessity, was repeatedly compelled to depart from the alliance, and to break the engagements by which she has bound herself to us. We did not reproach her with yielding to the necessity of the moment; and no generous mind would think that those circumstances ought in any degree to diminish or weaken the tie which former transactions must create between the Governments of

¹ *Letters by Historicus on Some Questions of International Law*, London, 1863, p. 41.

² J. L. Brierly, *The Law of Nations*, Oxford, 1936, p. 247.

the two countries. But there are higher and larger considerations which ought to render the maintenance of the Austrian Empire an object of solicitude to every English Statesman. Austria is a most important element in the balance of European power.¹ Westlake has maintained that one of the most important functions of law is to tame the primitive instincts of self-preservation and prevent the crimes committed in its name, but in the absence of compulsory arbitration, at least in cases of this kind, law has little chance of achieving so ambitious an end. Hence it appears that one of the main functions of international law consists in supporting the rule of force whose achievements it invests with the sanctity and dignity of law, and in providing a State anxious for the modification of the *status quo* with a convenient excuse for its upheaval.

Several of the shortcomings of the legal system of the international society are, in fact, a direct result of this subordination to the rule of force. True, although these deficiencies are not necessarily permanent, inherent or unavoidable, they cannot be eradicated until the existing relationship between law and power politics is reversed.

(1) *The Development of International Law and the Consent of the Powers.* A legal doctrine which holds that the law is a truth to be sought after and that it grows subconsciously would be extremely inexpedient in a system of power politics in which law is subservient to the rule of force. For the validity of truth obviously cannot depend on the attitude of the entity which is supposed to be bound and restricted by legal norms. Thus the doctrines of natural law, though never to any appreciable extent observed in State practice, were gradually replaced, even in the text-books and writings of international lawyers, by positivist doctrines according to which States are subject to international law only by their own express or implied consent.² The development of new rules of customary law could therefore conveniently be vetoed in each case by the contention that the State against which the existence of a rule was maintained had never given the required consent -- an argument which, when a Greater or 'leading' power was involved, could hardly be overruled, even if it was admitted that no *consensus omnium* was required for the creation of customary law.³ Unfettered State sovereignty therefore received considerable

¹ Harold Temperley and Lillian M. Penson, *Foundations of British Foreign Policy*, Cambridge, 1938, pp. 172-3.

² See, above, Chap. I; Oppenheim-Lauterpacht, *l.c.*, Vol. I, pp. 15, 17, 27-8, 99; D. Anzilotti, *Lehrbuch des Völkerrechts*, Berlin, 1929, pp. 48 *et seq.*

³ *Westrand Central Gold Mining Co., Ltd. v. The King*, L.R. (1905) 2 K.B. 391.

assistance from positivism, which was naturally acclaimed by protagonists of power politics such as Treitschke because it dealt 'the deathblow to the false conception of some imaginary law. Only a positivist law, then, remains, and no amount of theorizing can lay down principles for it, unconditionally and without more ado.'¹ Thus vanished the last vestiges of the former universalistic conception of law, a heritage of the Middle Ages; an atomistic outlook prevailed and the development of international law depended wholly upon the will of the entities which it was supposed to restrain.

(2) *Limitations of International Arbitration.* In a system ultimately based on the rule of force, the Leviathans cannot be expected to act with humility and moderation in matters of vital importance. As was emphasized in the Advisory Opinion of the Permanent Court of International Justice in the *Eastern Carelia* case, 'it is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration or to any other kind of pacific settlement.'²

It is not, therefore, surprising that the Peace Conference at the Hague 'convoked in the best interests of humanity'³ and having 'succeeded . . . in evolving a very lofty conception of the common welfare of humanity'⁴ did not succeed in taming the lion of power politics by means of arbitration. The general state of mind at the time was aptly described by Baron von Holstein in these words: 'Small disinterested States as subjects, small questions and objects of arbitral decision, are conceivable, great States and great questions are not. For the State, the more so the bigger it is, regards itself as an end not as a means towards the attainment of higher aims lying outside it. There is no higher aim for the State than the protection of its own interests. But the latter, in the case of the Great Powers, are not necessarily identical with the maintenance of peace, but rather with a subjugation of an enemy and rival by a well-constructed stronger group.'⁵ The conventions adopted at these Conferences therefore, even those concerning procedures not involving binding decisions, contain a collection of general clauses intended to provide an easy exit for States which might be inclined to revert to power politics. The Convention for the Pacific Settlement of International Disputes, for instance, contains several such clauses: 'With a view to obviating as far as possible recourse to force';⁶ 'the contracting powers agree to have

¹ *Politics*, London, 1916, Vol. II, p. 589.

² July 3rd, 1923, Series B.5, p. 27.

³ Preamble of the Final Act, 1899. ⁴ *ibid.*, 1907. ⁵ Dickinson, *l.c.*, p. 361. ⁶ Article 1.

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recourse, *as far as circumstances allow*, to the good offices of one or more friendly powers',¹ international commissions of inquiry were established 'in disputes of an international nature involving *neither honour nor vital interests* and arising from a difference of opinion on points of fact . . . *as far as circumstances allow*'.²

(3) *Limitations of Disarmament.* The spectacle of an abortive disarmament conference is by no means confined to modern times. In 546 B.C. the representatives of fourteen different Chinese States assembled to discuss this subject and came to no agreement,³ while the same lack of success attended the Hague Conference in the early years of the twentieth century, for the rule of force is as inimical to disarmament as it is to a comprehensive system of arbitration. The identity of interest even between potential enemies with regard to disarmament was described by Delcassé in a conversation with Count Münster, the German Ambassador in Paris: 'In this Conference we have precisely the same interests as you. You will not limit your forces at the moment nor agree to proposals for disarmament. We are in the same position. On both sides we wish to spare the Czar and to find a formula to get round this question; but we will not let ourselves in for anything which may weaken our forces on either side. To avoid a complete fiasco, perhaps, we may make a concession about arbitration. But this must not limit the complete independence of the great States.'⁴

(4) *Peculiarities of the Sanctions of International Law.* The customary view that resort to force and war are the sanctions of international law⁵ must not be accepted without reservation. For so-called self-help in international law has nothing in common with its supposed counterpart in municipal law. Not only is the scope of self-help here strictly limited by legal rules, but the community itself superintends the methods by which this extraordinary procedure is applied, and the injured party can invoke the assistance of the courts if his opponent oversteps the bounds of his rights. Thus, in the municipal sphere there exist sufficient safeguards for the preservation of the exceptional character of this right and the prevention of serious abuses. None of these guarantees, is, however, provided by international law. Although

¹ Article 2.

² Article 9.

³ Arnold J. Toynbee, *A Study of History*, London, 1934, Vol. III, p. 89.

⁴ Dickinson, *l.c.*, p. 357.

⁵ Compare *The Prize Cases*, decided by the Supreme Court of the U.S.A. in 1862 (2 Black 635); Oppenheim-Lauterpacht, *l.c.*, Vol. II, p. 147, and Hans Kelsen, *The Legal Process and International Order*, London, 1935.

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the action of a State amounting to self-help in certain specific cases is permissible, even in a legal system comparable to municipal law, it is neither certain nor even probable that resort to such means would keep within such limits a system of power politics. In these circumstances the classification of intervention, reprisals and war as measures of self-help or sanctions of international law becomes merely a convenient legal cloak for actions, which, only too often, cannot be justified on legal grounds, since they actually belong to the sphere of the rule of force. 'Self-help' is, therefore, one of the most obvious examples of cases in which legal terminology fulfils the function of disguising the true nature of a phenomenon. Here again it is the higher 'law' of the international society which is actually applied, but which is hidden behind the seemly façade of international law.

Nevertheless, international law has *real* sanctions, to which we shall return later, when the functions of international law outside the realm of power politics are under consideration.

If even the international law of peace suffers from such deficiencies, what scope is there for the rules of warfare and neutrality? In a war, fought with the limited purpose of re-establishing the old or founding a new equilibrium, international law has a certain function provided that the rules of warfare and neutrality do not unduly hamper the belligerents. Since principles of chivalry and humanity were applied *reciprocally* by belligerents, in deference to Christianity and to feudal ideals, the laws of warfare could gradually be relaxed, for conformity to them when applied reciprocally did not materially affect the decisive issue of victory and defeat. Similarly the legal determination of the rights and duties of neutrals corresponds to the interests of the belligerents: these are the prevention of the preferential treatment of the opponent by neutral powers and the avoidance of any violation of the rights of neutral States tending to drive them into the enemy's camp, thus extending the scope of the war and thereby endangering the main objects of a balance of power conflict. The neutral powers can likewise only hope to avoid being drawn into the war by steering an unwavering course between the Scylla and Charybdis of the belligerents.¹

The Napoleonic Wars and the World War, however, prove that as soon as war ceases to be a duel and develops into a life and death struggle the rules of warfare and neutrality which have previously been accepted by both sides are jettisoned whenever they are a serious

¹ Oppenheim-Lauterpacht, *L.c.*, Vol. II, pp. 498 *et seq.*

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disadvantage to one of the belligerents. Thus during such a war the rules governing actual practice between belligerents, as well as between belligerents and neutrals, move, by means of reprisals and counter-reprisals, further and further away from the law which had been regarded as valid before the beginning of the totalitarian war.¹

Thus extremes meet. In those spheres of the law of peace which are subservient to power politics, the threat of force plays an important part. But once force has been actually brought to bear, there remains no further effective threat. It is not therefore surprising that, as in the relations between belligerents, mutuality and reciprocity are the basic principles regulating the domains where international law functions as a legal system proper. These spheres, which are relatively unaffected by the rule of force, include transit, transport, communications, protection of economic interests such as copyrights and trade marks, economic and financial co-operation and humanitarian matters. Here international law plays an important part in regularizing and simplifying the relations between the powers, and even the subject-object relationship between the greater and smaller powers is transformed into at least relative equality in view of the peculiar nature of the real sanctions of international law. The advantages of conformity to international law in these spheres are so great that it would not be worth the while of even a powerful State, which could do so with apparent impunity, to violate these rules, since their observance can hardly be as irksome as the inconveniences which would be entailed by their absence or by exclusion as a law-breaker from the accompanying advantages. Hence a legal order based on mutuality and reciprocity can safely rely on the penalties inherent in its social machinery, i.e. on the unwillingness of each participant to jeopardize the benefits it derives from the system by being excluded because of repeated violations of its obligations. Within the State the vested interests anxious to preserve stability in the international society, such as export industries, banks or transport and trade establishments, can be depended upon to exert their influence and to maintain and extend these reciprocal relations subject to the limitations imposed upon them by the overriding exigencies of power politics.

It here seems apposite to consider the degree of homogeneity of the

¹ See James Wilford Garner, *International Law and the World War*, London, 1920, Vol. II, pp. 49 *et seq.* and 317 *et seq.*, and in *Transactions of the Grotius Society*, London, 1937, Vol. 22, p. 4; also W. Friedmann, 'International Law and the Present War', in *The Modern Law Review*, 1940 (Vol. III), pp. 177 *et seq.*

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entities which compose the international society, which, it is maintained, is essential for the survival and development of international law. It has been discussed earlier¹ that international law, the product of the disintegration of the *Civitas Christiana* of the Middle Ages, was originally applicable only between Christian nations, and was later extended to non-European States only on the assumption that the standards of value underlying the Christian law of nations were accepted by the Near and Far-Eastern States at least in a modified form, i.e. as the standards common to all civilized nations. But even this element of homogeneity was thrown overboard when the last barrier to heterogeneity was broken down by positivism.

Has the rise of the authoritarian and totalitarian States in the post-War period materially altered this position? Before the war, Czarist Russia, imperial Germany, monarchical Britain and republican France existed side by side in the international society,² and in principle nothing prevents democratic, authoritarian and fascist States from adopting a similar attitude of toleration in their relations with each other. The real problem is, to decide whether the fact that a State is democratic or totalitarian makes any perceptible difference in its readiness to honour its obligations. In the sphere of power politics, it would seem, the difference is one of degree rather than of kind, while on the non-political side, the principle of mutuality and reciprocity appears to have a stronger pull than the ideological sympathies or antipathies arising from homogeneity or disparity of structure. However, principles of reciprocity can merely be applied, *formally* except when the internal structure of the States is roughly similar, at least in so far as the division of competence between the State and the individual is concerned. Admittedly, Harms' law of increasing State activity, to which we referred before,³ works at a different speed in the democracies and in the totalitarian States.

The importance of this difference, which, however, seems merely temporary, should not be exaggerated. During the transition from the mercantile system to modern industrialism and free trade, although there were similar differences between the members of the international society in their division of functions between the State and the individual, they did not result in the breakdown of international law. A comparable process of assimilation is now noticeable

¹ Compare, above, Chap. 1.

² See, above, Chap. 8.

³ See above, pp. 49-50, and Sir John Fischer Williams, 'The Legal Character of the Bank for International Settlements', in *The American Journal of International Law*, 1930, (Vol. 24), pp. 665-6.

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even in the States which still, in principle, value the freedom of the individual – a development which, in spite of minor differences, may in the long run restore the reciprocity dependent on a roughly equal division of the functions allotted to the State and to the individual.

An aspect of the problem which merits more serious attention is the increase of State control over the activities which were, before the war, reserved to the initiative of the individual and which are being increasingly encroached upon in democratic as well as in totalitarian States. Economic, financial and social international relations, as well as education and culture, are becoming more and more involved in the turmoil of power politics, where law serves predominantly as an ideology. It cannot be denied that this development tends still more to circumscribe the scope of the international law which develops on a basis of mutuality and reciprocity.

A clear insight into the social functions of international law may also assist us in determining whether it can be regarded as law in the customary sense of the word. Here again our earlier distinction between community and society¹ may be helpful and prevent us from giving a purely formal answer by the time-honoured trick of carefully adjusting an abstract definition to preconceived conclusions.

The essential difference between a community and a society consists in the attitude of its members towards the group itself as well as towards each other. Solidarity, loyalty and the subordination of sectional interests are the hall-marks of a community, but are absent from a society, where self-interest is the main pre-occupation of the members. This difference also affects the law in these social groups, and the legal system fulfils a different function in each of them. The law which regulates the life of a community such as a family or of an organization such as a Church, generally formalizes only customary behaviour, which would be observed even without its existence; it defines the relations between members, which the majority regard as substantially sound and adequate, and finds its main justification in its application to abnormal situations. It is the visible expression of common values and of relationships which are in themselves a valid and binding reality for the greater part of the members of the community. On the other hand, the law regulating the relations between the members of a society, such as a joint stock company, has a different function. Its purpose is to prevent a *bellum omnium contra omnes*, and to make limited co-operation possible between individuals who,

¹ See, above, Chap. 1.

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being interested chiefly in the maintenance and improvement of their own positions, and seeking primarily their own advantage, are therefore at best prepared to apply the principle of reciprocity in their relations with each other, and for the most part only in proportion to their actual power.

There are no objections to regarding international law outside the range of power politics as a legal system. Here, as we have seen, a body of rules for human conduct is applied, which, by the common consent of the international society, is enforced by the penalties inherent in this legal system, conformity to which even the strongest members regard as advisable, and, indeed, as indispensable.

More doubtful, however, is the position of international law where it is subservient to the rule of force and power politics. International law might well fulfil the proper functions of a legal system – that of taming the primitive instincts on which the rule of force is based and eliminating the threat of force and resort to war except as an extraordinary means of self-help. In the light of political reality, since the inception of this legal system, such a description of the functions of international law would merit the indictment that it lacks realism and that it bears a suspicious resemblance to an ideological disguise for the social background of power politics. Intellectual honesty compels us reluctantly to admit that international law does not condition, but is itself conditioned by another system which is supreme in the international society.

Can international law claim to fulfil the functions of a legal system if and in so far as it is subordinate to the use of force? For those to whom this is a foregone conclusion, a comparison with the legal system of absolutist or totalitarian States may be helpful. *Lettres de cachet* and other forms of tyranny are as inseparably connected with the former as concentration camps and mass executions are the necessary accompaniments of the latter. Nevertheless, the France of Louis XIV, the Germany of Hitler and the Russia of Stalin are based upon detailed and complicated legal systems regulating the everyday lives of their citizens. Everyone both inside and outside these countries knows that it needs only a sign from the one man above the law or from a powerful leader in his entourage to alter the law whenever it may seem expedient. Admittedly, doubts as to the legality of this procedure can be justified by the handy fiction that, in such cases, no one actually stands above the law, since the supreme lawgiver – the king or dictator – only modifies the law in such exceptional cases.

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Nevertheless, such an interpretation would not amount to more than a polite statement of the hard fact that, in these cases, the legal system is dependent on its compatability with the supreme rule of force. These examples from the more familiar sphere of municipal law are given in order to illustrate a situation which has many similarities to the relationship between force and law in the international society.

The standing of such a legal system is far from impressive. A law concentrated in the hands of the mighty contradicts the conception of ideal law as formulated by philosophers and writers throughout the centuries. But research into the sociological background of municipal law has revealed that, although it compares favourably with international law, it is itself not entirely free from similar defects. Certainly, however, the importance and supremacy of power is nowhere so brutally obvious as in the international society and in totalitarian States.

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CHAPTER 11

THE FUNCTIONS OF INTERNATIONAL MORALITY

THE reader, cognizant of our description of the international society, may doubt, with some justification, whether it could be seriously argued that moral influence could permeate a society predominantly ruled by force. It is wise to avoid exaggeration; for we have found, in the environment already depicted, that there may exist specific, if not extensive, functions which international law can adequately fulfil.¹ Therefore it is highly probable that morality also is not entirely alien from this sphere. The problem of international morality can be expressed as follows: in the relationship between the stars of the international society, do there exist any rules identical to or comparable with those moral norms applicable to the relations between individuals? Is it any use either to apply in the inter-State system the standards of good or bad, or to inquire whether a State ought to fulfil a moral duty which it might, for reasons of convenience, prefer to leave undone?

Let us consider some of the possible methods of broaching this problem.

The religious approach would consist in an uncritical application of doctrinal principles to the inter-State system as far as was clearly demanded by the doctrine, or as authorized and unauthorized interpreters might think fit to apply its rules.

Although his opinion might vary as to the relation between the religious and moral systems, the moralist would follow essentially the same course. In respect of his ascertainment and assessment of the moral values actually recognized by individual or collective entities, the philosopher would meet us on common ground. For although, in his search for the alchemist's stone, he might be inclined to disregard other ethical systems, this potential flaw would not in itself affect his main function: to develop the results of his work into a

¹ See, above, Chap. 10.

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rational and coherent system, probably culminating in a scale of ethical values.

The lawyer's approach to the problem of international morality would differ in accordance with his views as to the relation between natural and international law. A positivist, of the type we prefer to term voluntarist since he excludes international morality, even if there were conclusive evidence in the practice of States of the reception of morality into law, would shrink from accepting morality as a *sine qua non* of international law. In diametrical contrast, a naturalist would either pin his faith to the superiority of natural over positive law or else equate them. Writers of the school known as Grotian, which represents the golden mean between these two extremes, would examine customary law, treaties and the general principles of law as recognized by all civilized States and would search in the practice of States for traces of an infiltration of morality into the system of international law, and, accordingly, would either exclude or apply conceptions of international morality.

We do not completely identify our task with any of those approaches; for we are not so much concerned with systems of morality and judgments on the role which morality *ought* to play in the inter-State system as with the moral rules which are actually or else professed to be applied. Yet such an investigation can only be regarded as a preliminary measure providing the indispensable material for the essential problem of this chapter, which is the analysis of the function of international morality. For this purpose, only sociological methods can adequately serve.

To recapitulate: the problem of international morality cannot in any way be identified with the existence, in this and other countries, of moral codes which regulate the relations between individuals *qua* individuals, and which might be termed international in the sense that their validity extends beyond the frontiers of a single country. The question is whether between Great Britain and France, France and Germany, Germany and Finland, there exist rules of behaviour which are in any sense comparable with the moral codes existing between gentlemen in Great Britain, decent citizens in France, and other beings whose outward appearance at least would lead to their inclusion in the *gens humana*.

Various endeavours have been made to elucidate whether moral rules impinge upon the behaviour of States, the stars in the international constellation.

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First, there are those theories which are based on a denial of the existence of an international morality. The chapter of *The Prince* in which Machiavelli formulates the conclusions based on his observations of contemporary behaviour¹ is yet unsurpassed in its realistic appreciation of Renaissance diplomacy:

'A Prince being thus obliged to know well how to act as a beast must imitate the fox and the lion, for the lion cannot protect himself from traps, and the fox cannot defend himself from wolves. One must therefore be a fox to recognize traps and a lion to frighten wolves. Those that wish to be only lions do not understand this. Therefore, a prudent ruler ought not to keep faith when by so doing it would be against his interest, and when the reasons which made him bind himself no longer exist. If men were all good, this precept would not be a good one; but as they are bad, and would not observe their faith with you, so you are not bound to keep faith with them. Nor have legitimate grounds ever failed a prince who wished to show colourable excuse for the non-fulfilment of his promise. Of this one could furnish an infinite number of modern examples, and show how many times peace has been broken, and how many promises rendered worthless, by the faithlessness of princes, and those who have been best able to imitate the fox have succeeded best. But it is necessary to be able to disguise this character well, and to be a great feigner and dissembler; and men are so simple and so ready to obey present necessities that one who deceives will always find those who allow themselves to be deceived.'

Second, there is the antithesis to this view as expressed by Kant, who does not admit any difference in kind between the moral obligations incumbent upon individuals and States:²

'Hence the mechanism of nature, working through the self-seeking propensities of man (which, of course, counteract one another in their external effects) may be used by reason as a means of making way for the realization of her own purpose, the empire of right, and as far as is in the power of the State, to promote and secure in this way internal as well as external peace. We may say, then, that it is the irresistible will of nature that right shall at least get the supremacy.'

Third, there are those theories derived from the contention that States are not outside the realm of morality, but that there is a difference in kind between the moral rules applicable to these collective

¹ *The Prince*, London, 1935 (Chap. XVIII), pp. 77-8.

² *Kant's Perpetual Peace*, London, 1927, p. 40.

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entities and to individuals respectively. According to Hegel and Treitschke, the moral duty of the State consists in its self-preservation and self-realization; that of the citizen in self-sacrifice:

'We have learned to perceive the moral majesty of war through the very processes which to the superficial observer seem brutal and inhuman. The greatness of war is just what at first sight seems to be its horror – that for the sake of their country, men will overcome the natural feelings of humanity, that they will slaughter their fellow men who have done them no injury, whom they perhaps respect as chivalrous foes. Man will not only sacrifice his life, but the natural and justified instincts of his soul; his very self he must offer up for the sake of patriotism; here we have the sublimity of war.'¹

Judging from State practice, it would appear that diplomatic correspondence, preambles of international treaties and the public utterances of Statesmen were imbued with ethical conceptions and maxims. Frequently recurring themes are freedom of the State, freedom of the sea, free access to the sea, good faith, order, honour, justice, equity, civilization, humanity and peace.

The interpretation of this phenomenon may be assisted by a few striking examples. An apt beginning is provided by Genghis Khan's address to a Persian embassy sent by the Khwarizm-Shah:

'Say ye unto the Khwarizm-Shah', Genghis told the ambassadors, 'that I am the sovereign of the sunrise, and thou the sovereign of the sunset. Let there be between us a firm treaty of friendship, amity and peace, and let traders and caravans on both sides come and go, and let the precious products and ordinary commodities which may be in my territory be conveyed by them into thine, and those of thine, in the same manner, let them bring into mine.'²

Again, at the Vienna Peace Conference of 1815, when the model European balance of power was worked out, Talleyrand suggested the following guiding principle for the negotiations: 'The only means of avoiding future wars consists in not dishonouring a great nation.'

According to the Act of the Holy Alliance of September 26th, 1815, the signatories 'acquired the intimate conviction of the necessity of settling the steps to be observed by the Powers, in their reciprocal relations, upon the sublime truths which the Holy Religion of our Saviour teaches'. Further, 'they solemnly declare that the present Act has no other object than to publish, in the face of the whole world,

¹ Heinrich von Treitschke, *Politics*, London, 1916 (Vol. II), p. 395.

² Ralph Fox, *Genghis Khan*, London, 1937, p. 195.

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their fixed resolution, both in the administration of their respective States, and in their political relations with every other Government, to take for their sole guide the precepts of that Holy Religion, the precepts of Justice, Christian Charity and Peace, which, far from being applicable only to private concerns, must have an immediate influence on the councils of Princes, and guide all their steps'.

A representative example of a clause of this calibre selected from Peace Treaties is provided by Article I of the Treaty between Austria, Prussia and Denmark of October 30th, 1864: 'There shall be in the future peace and friendship between their Majesties the King of Prussia and the Emperor of Austria and his Majesty the King of Denmark as well as between their heirs and successors, their respective States and subjects in perpetuity.'

Reference to principles of international morality frequently occur in diplomatic notes and correspondence. The following examples may be selected as evidence:

In a dispatch from Lord Russell to the Earl of Elgin appears the following passage:

'It would be unreasonable to expect that the Chinese should observe the technical laws and regulations which have been concurred in by European nations as the rules of peace and war. But the most ordinary notions of justice and humanity teach the rudest of mankind that when an engagement is made, justice requires that it should be observed.'¹

A note from the Mexican Foreign Minister to the British Minister is particularly interesting, since, in the same document, the legal responsibility of Mexico is denied:

'Nevertheless, the Constitutional Government, from feelings of humanity and justice, would not be indisposed to grant some kind of voluntary indemnity in such instances as the present one, and, as regards the family of Dr. Duval, would be willing to set aside house property to the amount of 25,000 dollars, the sum specified by Mr. Mathew. An arrangement could be carried out either in actual houses or in convent property, the latter having been secularized.'²

Or to quote from the Circular addressed on behalf of the Holy See to the Diplomatic Body in Rome protesting against the overthrow of established sovereigns in accordance with the principle of plebiscites, attention is drawn to an abuse 'which tends to confound the

¹ *Great Britain*, 1861, LXVI, I (2,754), Nr. 94, p. 204.

² Señor Zano to Mr. Mathew, *ibid.*, 1862, LXIV, 101 (2,915).

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immutable, eternal maxims of justice, advances the monstrous right of usurpation and introduces a germ of fatal inquietude and turbulence into society'.¹

The Peace Treaties of 1919 abound with references to international morality. Among the documents of the drafting period, Colonel House's plan for the Covenant lays particular stress upon the identity of the standards of morality binding upon the conduct of the individuals and of States. 'The same standards of honour and ethics shall prevail internationally and in affairs of nations as in other matters.'² The Preamble of the Covenant prescribes 'open, just and honourable relations between nations' and 'the maintenance of justice'. The accusations brought against the former German Emperor are based on the allegation of 'a supreme offence against international morality and the sanctity of treaties'. The Special Tribunal created under Article 227 of the Treaty of Versailles for the purpose of judging these offences was to be guided 'by the highest motives of international policy with a view to vindicating the solemn obligations of international undertakings and the validity of international morality'. Article 231, containing the War Guilt Clause, refers to 'the aggression of Germany and her allies'. In the Preamble to Part XIII of the Peace Treaties it is emphasized that 'peace can be established only if it is based upon social justice' and gives as the reason for the establishment of the International Labour Organisation the explanation that the High Contracting Parties 'were moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world'.

A noteworthy attempt to apply Christian principles of morality to inter-State relations is exemplified by President Roosevelt's policy of the 'good neighbour', a challenge to the 'bad' neighbour policy of power politics as practised from the days of Kautilya to our own times. This categorical imperative was enunciated by the President in his inaugural Address to Congress of March 4th, 1933: 'In the field of world policy I would dedicate this nation to the policy of the good neighbour who resolutely respects the rights of others – the neighbour who respects his obligations and respects the sanctity of his agreements in and with a world of neighbours.'³ The complete break with 'Yankee Imperialism' and 'Dollar Diplomacy' was re-emphasized in

¹ Cardinal Antonelli, *ibid.*, 1861, LXVII, 101 (2,757).

² David Hunter Miller, *The Drafting of the Covenant*, London, 1928 (Vol. II), p. 7.

³ *International Conciliation*, Nr. 322, pp 441–2.

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the President's address to the Brazilian Congress of November 27th, 1936: 'The motto of war is "Let the strong survive; let the weak die"'. The motto of peace is "Let the strong help the weak to survive".¹ In the Declaration of the Secretary of State of July 16th, 1937, these general principles are further elaborated.²

It would be incorrect to assume that authoritarian and totalitarian Powers did not profess adherence to the standards of international morality. In a Japanese Note to the American Secretary of State of 1924 a protest was registered against a clause of the United States Immigration Act of 1924 on the ground that 'international discriminations in any form and on any subject, even if based on purely economic reasons, are opposed to the principles of justice and fairness upon which the friendly intercourse must, in its final analysis, depend'.³ The speeches of the German Chancellor at the State banquet arranged in his honour in Rome afford insight into an ethical principle apparently approved by both partners in the Axis:

'Duce, last August on the Maifeld in Berlin you quoted as an ethical principle, sacred to you and Fascist Italy, these words: "Speak plainly and frankly, and if you have a friend, march with him right to the end." In the name of National-Socialist Germany, I, too, acknowledge this rule.'⁴ On his return from Munich on September 30th, 1938, the Duce said in his speech from the Palazzo Venezia: 'Comrades, you have been living through memorable hours. At Munich we worked for peace based on justice. Is not this the ideal of the Italian people?'⁵

It is no more than a just tribute to the greatest sacrifice in modern history rendered by a people to the cause of international peace, to conclude this survey with an extract from President Beneš' abdication broadcast:⁶

'With composure and with calm we confront our fate. In these difficult times I have tried to safeguard the interests of our State and I have tried to do what is right for Europe in order to preserve the peace. We have now to reach an understanding with our neighbours. Their over-powering might has been too great for us.'

¹ *New York Times*, November 28th, 1936.

² Compare the present writer's 'An American Challenge to International Anarchy. An Analysis of the U.S. Secretary of State's Declaration of July 16th, 1937, and of the Replies of Sixty-one Governments', in *Transactions of the Grotius Society*, London, 1938 (Vol. 23), pp. 147 *et seq.*

³ World Peace Foundation Pamphlets, VI, pp. 361, 372.

⁴ *The Times*, May 9th, 1938.

⁵ *ibid.*, October 1st, 1938.

⁶ *ibid.*, October 6th, 1938.

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So far, the passages cited tend to confirm the impression that international morality, whatever its functions may be, is a reality. Before attempting to elucidate the nature of this reality through an examination of the purposes served by morality in the international society, it is worth considering the agencies which create and transmit the moral values.

In democracies, governments maintain, and are perhaps over-ready to profess, that they are only pursuing a policy which is in accordance with the articulated or presumed wishes of their electorates. Such an attitude implies that the norms of their moral conduct are not supposed to differ materially from those of the people whom they lead, or if so, as in the case of an obvious incompatibility of standards, that they have to be harmonized with the latter.

Perhaps the most striking instance in recent history of such a discrepancy has been provided by the reaction of British public opinion to the projected Hoare-Laval Pact in the course of the Italo-Abyssinian War. The proposals of these Statesmen were in the finest tradition of power politics. Since they were based on an understanding that the Covenant could not be applied against the Greater powers, they were in no sense revolutionary. Subsequent events proved that, within the framework of a society ultimately ruled by force, they were even realistic. Nevertheless, in view of the election pledges given by the Government a few months previously, and of the British initiative shown to all League members in Sir Samuel Hoare's speech in the League Assembly in September, 1935, a 'deep feeling' arose – to quote Lord Baldwin – 'on the grounds of conscience and honour'. Therefore, the British Government thought it advisable to temporize and to yield to this wave of public indignation.¹

According to the importance they assign to propaganda within and beyond their frontiers, it would seem as though authoritarian and totalitarian States tend public opinion even more dearly than do the democracies. And, in view of the reaction of the German people to the Chamberlain visit to Germany, it would be quite erroneous to ignore or to disparage this facet of dictatorships.

What exactly is this phenomenon of public opinion that William Ladd once crowned 'Queen of the World',² and which is depicted by a renowned historian as follows: 'The opinion of the world, public opinion, when faced with the distinction between right and wrong,

¹ See the present writer's 'The Italo-Abyssinian Dispute (III)', in *The New Commonwealth Quarterly*, 1936 (Vol. I), pp. 334 *et seq.*

² William Ladd, *An Essay on a Congress of Nations*, Washington, 1916, p. 1.

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always adopts the right'.¹ Or, to quote from public documents, the preamble to the Constitution of Brazil of November 10th, 1937, seeks to justify its imposition on the Brazilian people by reference to 'the support of the armed forces and yielding to the dictates of public opinion, both justifiably apprehensive of the dangers threatening the Union and of the swiftness with which our civil and political institutions were being undermined'.²

In order to attain a sober judgment of this phenomenon, its existence as a psychological reality, and as an expression of mass reaction, can hardly be denied. Even if we were to grant Professor Mowat's optimistic assumption that public opinion would, in an issue of right *versus* wrong, inevitably adopt the right, two caveats seem indispensable. First, the issues of life do not usually appear as a choice between black and white, but between a variety of pastel shades, as, for instance, a scrutiny of the work of municipal courts will reveal. Much the same applies to the inter-State sphere in which, however, we tend to accept such simplifications with greater credulity. Further, even assuming that public opinion were to reach the right decision in a case where only the lighter and darker shades of grey were involved, the comparison of colour is a comparatively simple matter beside the classification of the behaviour of States according to one of the available standards of moral appraisal or condemnation. Everything depends on the material and light in which it is shown. Degrees of emphasis may prove decisive in shifting the balance one way or the other, as in the instance of controversial events such as the war in Spain.

In these circumstances, the transmission of evidence is of vital importance and the pivotal position occupied by 'monopolies of sensationalism' becomes apparent.³ The interests of newspapers as profitable concerns do not necessarily harmonize with the indispensable conditions of a well-informed public opinion: the impartial transmission of news and the judicious selection of important news. The element of competition does not appear to be a reliable safeguard in view of the public's propensity for items of a sensational character rather than for those germane to a conscientious fulfilment of those responsibilities supposed to be incumbent upon it in its capacity as mouthpiece of public opinion. Again, the various news organs contend for priority in the dissemination of the result of a race or a divorce suit, thereby deflecting the attention of the 'queen of the

¹ R. B. Mowat, *Public and Private Morality*, London, 1933, p. 122.

² *International Conciliation*, 1939, p. 30.

³ See, above, Chap. 2.

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world' from perhaps not less important considerations in the political and economic spheres. Thus, the casual and unsystematic manner in which public opinion is supplied with the material which assists in its formation is a patent feature even of democratic political life. It is poor consolation to trust that, where really vital matters are concerned, public opinion will at a certain stage consolidate the issue and irresistibly override the barriers which had been raised by an inadequate supply of information or by its own indolence, for in a period of shock tactics and lightning strokes, the time-factor is of primary significance.

Authoritarian and totalitarian States prefer to follow another procedure, by which public opinion becomes the tool of political exigencies. Far from being the tribunal before which their case is placed, public opinion becomes to them an instrument on which to play their customary melodies.

It is therefore essential to realize that, even in democracies, public opinion is no adamant *rocher de bronze*. Although it is within its power to influence other social forces, it may also resemble a weathercock which swings to the vagaries of these forces.

In our analysis of the problem, we have not so far dealt with the assumption which apparently underlies these quotations from State practice, that British and Japanese, German and Czechoslovakian Statesmen associate the same ideas with the notions of justice and equity, honour and friendship to which they render such eloquent homage. In other words, is there any justification in assuming the existence in the international society of one universally binding system of moral values?

Hold-Ferneck, an Austrian international lawyer, whose views are based on studies of the psychology of nations, refutes the fact of a morality entitled to claim anything approaching world-wide recognition.¹ At first sight, it would appear that an additional argument, which Hold-Ferneck does not put forward, would support this contention. Ultimately, it may be contended, most ethical systems spring from a religious source, and are the product of a conscious or unconscious process of secularization. The most perfunctory survey of the attitude of major religions towards the world in general, and inter-State relations in particular, reveals a lack of unanimity on this score. The Christian conception alone lends itself to manifold interpretations, varying from the doctrine of rendering unto Cæsar what is

¹ *Lehrbuch des Völkerrechts*, Leipzig, 1930 (Vol. I), pp. 17 *et seq.*

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Cæsar's to that of non-resistance. Some religious systems admit the validity of truce but not of peace in the relations between the followers of the prophet and the infidels. According to others, all worldly matters are intrinsically bad, since they detract from human perfections or, at best, are irrelevant from the standpoint of the faithful. Nevertheless, the impact of these conflicting dogmas upon the formation of international morality was not as heavy as might have been expected. In the expansion of Europe overseas, the religious and ethical conceptions of this Christian society spread concurrently with political and economic penetration. In the course of this process the standards became less rigid and the original religious source less apparent. This two-fold development assisted in their transformation into the moral norms common to all civilized nations. Thus we can safely surmise that Italy and Japan have the same values in mind when they refer to 'justice', although that need not necessarily mean justice.

In attempting to elucidate the positive functions fulfilled by international morality, we must bear in mind the conclusions derived from our analysis of the social background of the international society: that the inter-State system is ultimately governed by instincts, such as self-interest and self-preservation and that its supreme law is the rule of force.¹ As international law is partially subservient to and partially irrelevant from the standpoint of power politics, it is probable that international morality is cast for a corresponding minor role.

An apt introduction to a realistic inquiry is perhaps provided by an assessment of the measure of influence imposed by the rule of force upon moral values in the international society.

This internexus was not strange to Grotius, who considers it in a chapter entitled, 'There are certain causes which present a false appearance of justice': 'Others allege causes which they claim to be justifiable, but which, when examined in the light of right reason, are found to be unjust. In such cases, as Livy says, it is clear that a decision based not on right but on violence is sought. Very many kings, says Plutarch, make use of the two terms, peace and war, as if they were coins to obtain not what is right but what is advantageous. New causes which are unjust may, up to a certain point, be recognized from the foregoing discussion of just causes. What is straight is in fact a guide to what is crooked.'²

The Treaty of Utrecht, in which the balance imposed is called a '*justum potentiæ equilibrium*', or the Treaty of Chaumont of 1814

¹ See, above, Chap. 7.

² *De Jure Belli ac Pacis*, Bk. II, Chap. XXII.

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between Austria, Great Britain and Prussia in which the signatories pledge themselves to oppose France 'for the salutary purpose of putting an end to the miseries of Europe' and of 'securing its future repose, by re-establishing a just balance of power', exemplify a complete identification of the interests of power politics and justice.

International morality has been indicted so frequently for its alleged subservience to vested interests that it will suffice to refer to only one further case: the identification of the League Covenant with the interests of the *status quo* Powers. As Freiherr von Neurath, the former German Foreign Minister and present Protector of Bohemia, stated the case for the 'have not' States: 'In the course of time it has become steadily clearer that the powers which support and direct the Geneva institution have as their real aim, not the introduction of a rule of law corresponding to the true needs of justice and of international relations, but rather, under cover of such an ideal, the pursuit of particular interests.'¹

In a system of power politics, appeals by Statesmen to moral standards would not occur so regularly if they had no utility value. The question therefore arises: Whom are the principles intended to impress? The other governments? In certain circumstances this may be the case, although, more generally, the other members of the cast, themselves often equally skilled in this branch of art, can be relied upon to penetrate to the underlying intentions. It is, therefore, more likely that these gestures are destined for the entertainment of those who are less strenuously participating in the dramas of international affairs: public opinion abroad and at home. To quote Mowat: 'Civilized Governments do not openly acknowledge themselves to be bandits or plunderers; they can always put forward a "case" in their favour. This they do, partly because they offer lip-service to the morality which in practice they ignore, and partly because, for political reasons, they do not wish to offend brutally the opinion of moral people in their own or other countries.'² Other observers of international relations, like Troeltsch,³ a German sociologist, arrive at the same conclusion. They admit that in our age of mass organization it would be scarcely possible for States to mobilize their citizens, particularly in the internecine struggles of modern warfare, without resort to some brand of ideology, borrowed from the realms of ethics and of the philosophy of history.

¹ *The Nineteenth Century*, 1938, p. 5.

² Mowat, *l.c.*, p. 48.

³ Ernst Troeltsch, *Spektator-Briefe*, Tübingen, 1924.

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It follows that the main function of morality in the international society does not consist in the control of one's own behaviour, but in the use of morality as a keen and powerful weapon against potential and actual adversaries.

There are also positive aspects to this state of affairs; for it is implied in this statement that citizens who are imbued with the standards of reason and behaviour governing their individual relations, possess a grade of morality – measured according to any altruistic ethical system – which is loftier than that of their respective governments. Particularly in democratic States, the widely spread knowledge of the discrepancy and the superiority of individual behaviour need not engender dejection and apathy. For the weapon is well fashioned for service in civic hands. Whether it oppresses or elevates is determined by the impact of the influence of citizens upon the State machinery. In countries where these factors are by no means negligible, the use is determined by national temperament and courage to readjust the standards of value prevailing in the international society, whose ultimate character depends not on the Leviathans but on the individual.

There is, however, a reverse side to the medal. We have shown that international morality fulfils the functions of an ideology in that it masks the interests of power politics. Yet, as Radbruch, Germany's foremost legal philosopher, has convincingly shown, ideologies rarely fail to leave those interests unaffected. It becomes incumbent upon governments to refine their methods in order to escape an over-brutal violation of the standards of international morality; on occasions, the insistence of public opinion has even prevailed upon them to moderate, at least temporarily, their actual policies. To this extent, the interests become secondary to the ideas which they have called to their assistance.¹ Further, it may be maintained that in such exceptional cases, the influence of international morality exceeds that of international law, which, since it is a set of highly technical rules, has not that direct access to the imagination of the public which broad principles, such as good faith and justice, can claim.

In these circumstances the very need for international law, as separate from international morality, might be disputed. One might, however, equally enquire why municipal law should exist independently of religion and individual morality. The answer supplied by Plato in *The Laws* still suffices: 'Mankind must either give themselves

¹ Gustav Radbruch, *Rechtsphilosophie*, Leipzig, 1932, p. 59.

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a law and regulate their lives by it, or live no better than the wildest of wild beasts, and that for the following reason. There is no man whose natural endowments will ensure that he shall both discern what is good for mankind as a community and invariably be both able and willing to put the good into practice when he has perceived it.¹ It might be objected that what holds good in the instance of a mature system of law is invalid in a system which lacks effective sanctions. This proviso is admissible in that type of international law which is subservient to power politics, i.e. in which reprisals and war are but fictions for the absence of proper sanctions. But it does not apply to those aspects of this legal system, which, as already demonstrated, rely on penalizations to which the character of real sanctions may be attributed. More particularly, a set of such specific rules can perform, in the highly involved and specialized relations between States, functions analogous to those which, in the municipal sphere, contribute to the development of those complete systems of law, symbols of advanced stages of civilization.

It would be an attractive task to analyse meticulously the relationship between international law and morality. However, a perfunctory indication of its most essential features must needs suffice. When international law served to bridge the disintegration of the mediæval Commonwealth and the anarchy which seemed to threaten the European State system, the first stone was provided by international morality in the form of international law. It was sincerely believed that there existed certain external rules, valid, as Grotius expressed it, in the whole 'society of beings endowed with reason'.² It followed that thinkers regarded themselves justified in propounding, as existing and binding legal rules, coherent systems of what in reality they thought ought to be the law. In the words of Dean Pound, 'international law was born of juristic speculation and became a reality because that speculation gave men something by which to make and shape international legal institutions and a belief that they could make and shape them effectively'.³

Slowly, however, this intimate connection relaxed under the strain of various forces – chief among which was represented by the nation States whose strength was perpetually increasing, and who were aspiring to unfettered sovereignty. Other factors which should not be ignored consist in the reaction against the ideological abuses of natural

¹ A. E. Taylor's translation, London, 1934, p. 265.

² *I c.*, Bk. I, Chap. I.

³ Roscoe Pound, *Philosophical Theory and International Law*, Leyden, 1923, pp. 71, 88.

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law, the naive identification of the natural law of the seventeenth and eighteenth centuries with *the* natural law, efforts at codification combined with conscious efforts for the reform of international law, and last, but by no means least, the impact of empirical natural science upon the methods of social science.

In spite of the gradual ascendancy of positivist doctrines, with their eminent suitability for any dogma of State independence, inter-State practice itself counteracted this development, at least in so far as perorations by Statesmen and diplomatic correspondence testify, for the reason already discussed that international morality though less treasured as a guide to one's own conduct, could be adapted into a weapon which diplomats were prone to use for the purpose of strengthening shaky legal positions. This explains why joint references to law and morality recur so often in international correspondence; it also explains the paradox by which the practice of States became instrumental to a process of reception of international morality by international law, which even the stoutest protagonist of positivism could scarcely overlook.

The extent to which international tribunals assisted in this development also calls for comment. We can here cite only a single incisive example: the interpretation of the terms of 'law' and 'equity', on which, in accordance with the agreement concluded between the two countries, the Permanent Court of Arbitration had to base its decision in the case of the Norwegian claims against the United States: 'The words "law and equity" used in the special agreement of 1921 cannot be understood here in the traditional sense in which these words are used in Anglo-Saxon jurisprudence. The majority of international lawyers seem to agree that these words are to be understood to mean general principles of justice as distinguished from any particular system of jurisprudence or the municipal law of any State.'¹

To some extent, and probably just as imperceptibly, the Permanent Court of International Justice has fulfilled in the post-War period functions analogous to those of natural law in the infancy of international law to contribute to the development of its legal rules. Yet in connection with the political development of recent years the Court seems to have suffered from a starvation process occasioned by the non-submission of cases to its jurisdiction, a symptom which does not augur well for the promotion of existing international law through this agency in the immediate future. Thus our generation, by reason

¹ Permanent Court of Arbitration, XVIII, p. 141.

of its very awareness of the functions of natural law, has lost the chance of using it as an agency in the evolution of international law, and deeper insight into the origin of the law of nations was purchased at the grievous price of the exclusion of natural law as a means of its subconscious growth.

To recapitulate, it appears from our investigation into the functions of international morality that it is used primarily in State practice as an ideology, cloaking, in deference to public opinion, policies of national self-interest and self-preservation. But it is useful to recollect that this ideology, in common with others, is also a reality with an automatism of its own. Second, the relation between international morality and law has never been entirely disrupted and has proved one of the decisive factors in rendering possible the development of international law into a legal system of coherent norms.

It has been alleged by Mowat¹ that other ages have been more fortunate than our own, since they were not confronted with that cleavage between international and individual morality which characterizes our modern State system. In order to understand the limitations of this argument, it must be remembered that the Greek Commonwealth was essentially a closed society and that its Statesmen never considered themselves bound by any moral ties in their political intercourse with the 'barbarians'. The same applies to the Roman Empire, which dealt with its border tribes in no new spirit. Similarly, the Middle Ages are in a special position, since, at least theoretically, the loyalties towards the Christian community surpassed any obligations which might be incumbent upon the individual as a member of any sectional group, and these teachings were applied to relations with the non-Christian world only *cum grano salis*.

Yet the ascendancy of the sovereign State has brought about a situation in which the Leviathan has successfully appropriated to himself the undivided loyalty of the individual. We are confronted with the co-existence of an international society and about sixty communities in which the principle 'My country, right or wrong' is supposed to solve the problem of international morality for the citizen. The problem is further complicated by the existence among States of a sliding scale of moral values, a phenomenon which causes a reduction of those rules governing actual conduct to the lowest possible denominator, whenever the most powerful States pertain to the lower categories and the remainder do not regard it as their

¹ *I.c.*, pp. 16 *et seq.*

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vital interest to maintain and enforce certain minimum requisites of behaviour in the international society.

Certain idiosyncrasies in the mass reaction towards international affairs are conducive to this situation. Still more than in private and internal life does the power of success impact upon international affairs. There seems to be more than one grain of truth in Machiavelli's mournful observation: 'If a Prince succeeds in establishing and maintaining his authority, the means will always be judged honourable and be approved by everyone. For the vulgar are always taken by appearances and by results, and the world is made up of the vulgar, the few only finding room when the many have no longer ground to stand on.'¹

In addition, the forces of passion and other irrational motives should not be under-estimated in the reactions of individuals when forming part of a 'mass'. Political leaders may be rationally conscious of *raisons d'état* which will finally predominate on account of the wide amount of discretion accorded, even by democracies, to their representatives in the conduct of foreign affairs, whereas public opinion is highly susceptible to irrational influences, which, incidentally, need not necessarily conflict with the interests of power politics. As Palmerston remarked: 'Nations, and especially republican nations or nations in which the masses influence or direct the destinies of the country, are enraged much more by passion than by interest and for this plain reason – namely, that passion is a single feeling which aims directly at its object, while interest is a calculation of relative good and evil and is liable to hesitation and doubt. Moreover, passion sways the masses, but interest acts comparatively on the few.'²

Thus we are driven to conclude that the subordinate role of international morality is intimately connected with the co-existence of the international society with the some sixty States which engulf the loyalties of the individual. It follows that, if even the standards of international morality are to be raised to the level of those governing the relations between citizen and citizen, the constructive problem turns on the transposition of these loyalties to the international society.

With this momentous task confronting our generation, we may find consolation in the wisdom of Madariaga:³

¹ *I.e.* (Chap. XVIII), pp. 79–80.

² Herbert C. F. Bell, *Lord Palmerston*, London, 1936 (Vol. II), p. 295.

³ *The World's Design*, London, 1938, p. 33.

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'Readers of *Don Quixote* may remember the meeting between the Knight and the Squire and a brigand in the vicinity of Barcelona. The Knight and his Squire observed that the virtues of justice were indispensable, even in an association of brigands, for the head of the brigands was bound to administer justice and equity in distributing the spoils of brigandage. If the virtues of justice and association are found indispensable even amongst brigands, we can hope that they will gradually raise the standards of nations which have so far behaved like collective brigands.'

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CHAPTER 12

THE INTERNATIONAL SOCIETY: STRUCTURE AND TRENDS

IN the opinion of E. H. Carr, 'there is a world community for the reason (and for no other) that people talk, and within certain limits behave, as if there were a world community'.¹ It is worth while pondering on the question whether the reverse statement is not equally plausible, particularly if we remember Carr's pertinent observations on the relativity and the conditioning of thought by external circumstances.² While not under-estimating the reality and the power of talk and behaviour *as if*, in the sense in which Professor Carr refers to the international society, it is probably wise to remember Frederick William Robertson's rather pertinent saying: 'Society is not made by will, but by facts'.³

The distinction between society and community outlined in a previous chapter⁴ will prevent us from falling victim to any sort of wishful thinking which otherwise the assumption of the existence of a group relation between the entities in the sphere of international relations might imply. But to assume that nation States, international cartels, the officers of the International Labour Organization and the man in the street, to select only a few of the types by which the international space is populated, constitute the international society by their talk and 'within certain limits' their behaviour, seems to attach too much weight to these activities. Their conscious attitude towards each other certainly colours their relations. It may decide between a society and community. But the fact which is responsible for the existence of a society or community is the co-existence of entities which cannot ignore each other and which, by their talk and behaviour, can merely influence the quality of the group which they form.

¹ E. H. Carr, *The Twenty Years' Crisis*, London, 1939, p. 206.

² *ibid.*, pp. 87 *et seq.*

³ Quoted by Philip Marshall Brown, *International Society*, New York, 1923, p. vii.

⁴ See, above, Chap. 1.

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The most impressive feature of the international society is clearly its hierarchic structure.¹ This gradation does not only exist between the nation States, the stars of the international stage and other minor casts, the relations between which only exist on sufferance on the part of the Leviathans. This pyramidal structure extends to the relations between the States. The distinction between world, Greater and smaller States depends on the criterion of power which over-rides any other potential standard of measurement. In such an environment, it becomes the supreme duty of any entity which wishes to survive to acquire at least as much power as is required to be able to carry on the perpetual struggle for existence.

This means submission to the State of all forces which are not strong enough to fight on this plane of power politics, or which are not evasive enough to challenge the State with weapons which are beyond the reach of the Leviathans. As the conflicts between the Christian Churches and totalitarian States have shown, at least from the standpoint of short-range policy, the State which, by ideologies of self-aggrandizement and self-adoration, creates powerful counter-religions is not a negligible adversary even for institutions which derive their strength in the main from the spiritual sphere.

In the case of entities which are organized as States, the alternative to the universal imperialism of one amongst them over the rest is a policy based on the principle of self-preservation and self-interest. It depends on the concrete situation whether armaments in themselves form an adequate protection against the everlasting threat of annihilation, whether such a policy has to be supplemented by alliances, possibly contributing to the formation of a balance of power system, or whether favourable opportunities and weakness on the part of other entities permit a more active and aggressive pursuit of the policy of national self-interest.

In a society the selective principle of which is force the function of law and morality is necessarily limited. In the main, these systems of norms are restricted to spheres irrelevant from the standpoint of power politics. To the extent to which they penetrate into this circle their very weakness condemns them to fulfil functions which in effect amount to a camouflage of the existing rule of force. Not being strong enough to command over-riding respect, and not being blatantly ineffective, within the purview of the realm of power politics

¹ See, for a different interpretation, Clyde Eagleton, *International Government*, New York, 1932, p. 29.

international law and morality serve as ideologies by which the prevailing international anarchy is conveniently covered up.

Another characteristic of the international society which is important is its universality. The whole world forms to-day 'the great society'.¹ This 'scientific fact of world inter-dependence'² is equivocal in itself. It may mean that the growing shrinkage of distances merely brings the difficulties and conflicts of mankind nearer to each other. It is as well in this connection to remember that 'guns were among physical instruments destined to merge all nations and kindreds in one society'.³ Equally pertinent is the retrospective opinion of Lord Lyons, the British Minister in Washington at the time of the interception of the two Confederate Commissioners by Captain Charles Wilkes of the United States Navy, on the likely consequences in that case of improved communications:⁴ 'If there had been telegraphic communication across the Atlantic, it would have been impossible to avert war'.⁵ Equally ambiguous is another aspect which is frequently stressed: 'The States make a community because there is a constant intercourse between them. Intercourse is therefore a condition without which the Family of Nations could not exist.'⁶ The fact of world-wide contacts includes all sorts of possibilities. For everything depends on the kind of relationship that exists between the entities of which the international society is composed. This objective situation may cause men to react as Louis Le Roy did in the sixteenth century: 'We can affirm that the whole world is now known, and all the races of men; they can interchange all their commodities and mutually supply their needs as inhabitants of the same city or world state.'⁷ Some countries may, however, prefer to be left alone, perhaps for the reason which Gentili assumes, 'that it is a common characteristic of all uncivilized peoples to drive away strangers'.⁸ As the history of the relations between the Western countries and China proves, the European States did not rest at that, but forced China under the threat of their

¹ Graham Wallas, *The Great Society*, London, 1914, p. 3.

² Harold Laski, *Grammar of Politics*, London, 1931, p. 64.

³ Lionel Curtis, *Civitas Dei*, London, 1937 (Vol. II), p. 19.

⁴ The news of the exploit did not reach London for a fortnight after Wilkes' landing at Fortress Monroe: *The Cambridge History of British Foreign Policy*, Cambridge, 1923 (Vol. II), p. 502.

⁵ Lord Newton, *Lord Lyons. A Record of British Diplomacy*, London, 1913, Vol. I, pp. 77-8.

⁶ Oppenheim-Lauterpacht, *International Law*, London, 1937 (Vol. I), p. 219.

⁷ Louis Le Roy, *On the Vicissitudes or Variety of the Things in the Universe* (1576), quoted by J. B. Barry, *The Ideal of Progress*, London, 1920, p. 45.

⁸ Alberico Gentili, *De Jure Belli Libri Tres*, Oxford, 1933, Vol. II, Bk. I, Chap. XIX, pp. 89-90.

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naval guns to accept on a basis of equality the intercourse with what the Chinese regarded as 'immature and uncivilized peoples'.¹ Similarly emphatic was the attempt of the British Viceroy of India to establish trade relations with Tibet and to overcome 'the most extraordinary anachronism of the twentieth century that there should exist within less than three hundred miles of the borders of British India a State and a government with whom political relations do not exist and with whom it is impossible even to exchange a written communication'.²

In the light of these and other experiences, inseparably connected with the expansion of the European State system over the whole globe,³ it would be unrealistic to regard international society as being founded on vague common interests of an economic or cultural character⁴ pertaining between all nations and to ignore the hierarchy of power which forms the backbone of this superstructure and holds together the framework of the international society.

Thus an analysis of the international society seems to yield the following conclusions:

First, the international society is the result of a twofold and simultaneous development, the disintegration of the Christian Commonwealth of the Middle Ages and the transformation of this European community into a world-wide society.

Second, the international society is composed of a variety of groups of an intensely heterogeneous character.

Third, amongst these groups the State is the dominant type.

Fourth, the sovereign State, by its union with the nation, has greatly increased its strength and cohesion.

Fifth, the relations between States are ultimately based on the principles of self-preservation and self-interest.

Sixth, the hierarchy between the nation States depends on their power.

Seventh, isolation and universal imperialism can be ruled out as normally useful forms of power politics in a society which contains a number of world and Greater powers.

¹ Earl H. Pritchard, *The Crucial Years of Early Anglo-Chinese Relations, 1750-1800*, Pullmann, Washington, 1936, p. 107. See also Jean Escarra, *La Chine et le Droit International*, Paris, 1934; *Cambridge History of British Foreign Policy, l.c.*, Vol. II, pp. 215 *et seq.*; W. W. Willoughby, *Foreign Rights and Interests in China*, Baltimore, 1927 (2 vols.); and George W. Keeton, *The Development of Extra-territoriality in China*, London, 1928 (2 vols.).

² *Cambridge History of British Foreign Policy, l.c.*, Vol. III, p. 323.

³ Compare, above, Chap. I.

⁴ Oppenheim-Lauterpacht, *l.c.*, Vol. I, p. 12.

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Eighth, the typical forms of behaviour in this society consist in policies of armaments, alliances, balance of power systems, and power diplomacy, including war.

Ninth, the functions of international law and morality are either limited to spheres peripheral from the standpoint of power politics or are those of ideologies camouflaging the rule of force.

So far our investigation has mainly concentrated on the structure of the international society. Is it possible to indicate any trends which show a direction in which this global system moves? Various theories have been put forward. At this stage, it seems appropriate to express a special warning against the danger of mixing up the analysis of what is with teleological assumptions which can hardly be proved within the orbit of social science. Kelsen¹ and Lambert classify² the international society as a primitive community. 'The entire community bound by international law has to pass through all the stages of evolution which the individual State community has passed through, to reach the embryonic condition in which it still is to-day.'³ We are not concerned here with the question whether the development of the international society towards the stage which national communities have reached is desirable or undesirable. Our problem is whether it is scientifically correct and advisable to regard the international society as a primitive community which is on its way towards a higher degree of differentiation and integration. In the first place, a primitive community, in the only sense in which this term has any concrete meaning, is one which merits this classification from the standpoint of the anthropologist. According to the results of field research carried out amongst groups of this sort nothing would be further from the mark than to assume that these communities live in a state of anarchy. If the function of law is limited in these groups, the reason is that these communities are saturated with a hypertrophy of customary and religious rules which dispense with the necessity for an elaborate legal system. Malinowski sums up his impression of these primitive communities as follows: 'Law and order pervade the tribal usages of primitive races, they govern all the humdrum course of daily existence, as well as the leading acts of public life, whether these be

¹ Hans Kelsen, *Die reine Rechtslehre*, Leipzig, 1934, p. 131; *The Legal Process and International Order*, London, 1935, pp. 15 *et seq.*; and 'Zur Lehre vom Primat des Völkerrechts', in *Revue Internationale de la Théorie du Droit*, 1938 (Vol. XII), pp. 213 *et seq.*

² Jacques Lambert, *La Vengeance privée et les fondements du droit international public*, Paris, 1936, pp. 7 *et seq.*

³ Kelsen, *The Legal Process*, *l.c.*, p. 16.

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quaint and sensational or important and venerable.¹ Yet, even assuming that the anthropological basis of these theories were not as weak as is the case, how do they reconcile the strange paradox that highly organized and, as they call themselves, civilized States behave in their external relations like tribes of the Stone Age? As Lauterpacht rightly remarks, 'the decisive factor is that modern States are not primitive communities'.² Furthermore, why should one assume that this 'primitive' group will develop into a higher form of community life? It may be that mankind wants it. But that does not necessarily mean that those who aspire to such a transformation will have the strength, will-power and courage to overcome the obstacles which oppose a change of such magnitude. It may be said that the international society is still in its adolescence and that 300 years count for nothing in the life of a group. But if comparison with the life of the individual is permissible, then we must not forget that, besides the primitiveness of youth, there is the primitiveness of senility, and that it is idle speculation to attempt an answer to either question on a basis of serious research. As Mussolini reminds us, the history of nations not only teaches us that nations are rising and decaying, but also that they are 'rising again after a period of decadence'.³ How often has it been said of this country that it is beyond its zenith, that it rests on its laurels and that it is on the point of breakdown and collapse? And how often have the sceptics and 'heirs' of this Empire been surprised by sudden dashes, as in the case of the *Altmark*, the feat of Dunkirk or the bravery of the populations of London or Coventry?

Integrations and transformations of this kind are possible. They may be a matter fervently to be desired, but it is hybris to forecast them as the necessary result of calculable trends. All that has happened so far is that States have been formed out of the ruins of feudal systems, but this development has been based on superiority of power of a kind such as no one can hope to marshal against world powers or Greater powers. Whether this process can be expected to continue or not is a question which nobody in his senses would try to answer on any basis of research. If it is suggested that so far an integration of smaller into bigger units is noticeable this can be granted as long as it is realized that nationalism has been the motive power behind this

¹ B. Malinowski, *Crime and Custom in Savage Society*, London, 1932, pp. 2, 23, 26, 31 *et seq.*, 41, 55, 58, and Thomas I. Cook, 'The Tendency to Obey Law', in *The Political Science Quarterly*, New York, 1939 (Vol. 34), pp. 86 *et seq.*

² H. Lauterpacht, *The Functions of Law in the International Community*, Oxford, 1933, pp. 433-4.

³ Benito Mussolini, *Der Faschismus*, Munich, 1933, p. 26.

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development, and that the nation State has formed its limit in so far as the expansion was a decision of free will. Therefore, common sense suggests that anyone who expects a development along analogous lines in the international society ought to be in a position to show motive powers of similar strength in the inter-State system.¹ The fact that there are weighty reasons why such an organization of the international society is desirable or may even be indispensable as an alternative to international chaos is entirely different from the question whether in actual reality mankind prefers international order to perpetual chaos.

Van Vollenhoven, the late distinguished Dutch international lawyer, divides the growth of international law into three periods. From 1492-1780 the law of war prevailed in the international society; from 1780-1914 the inter-State system was governed by the law of war and peace; and from 1919-31 by the law of peace and war.² There remains the following period which death spared this deep probing scholar from having to qualify, not, as he had intended, as the era in which the law of peace can be realized, but as a relapse into complete anarchy. It cannot, however, be justly said that van Vollenhoven underestimated the element of will and motive power necessary to bring about the reign of peace: 'To pray for peace without organizing the world is to do like the Christian Scientist who prays for healing without going to the doctor.'³ Van Vollenhoven's interpretation of the trends discernible in the history of the international society is a particularly valuable object lesson; for though this scholar could claim an exceptional knowledge of his subject, and sound as his diagnosis might have appeared at the time when it was made, it only needed a few years to realize that the period of the law of peace and war would not immediately, and perhaps never, be followed by the reign of peace. It, therefore, seems that Max Huber, who combines the detachment of the research worker with a constructive approach to international affairs, correctly sums up the scientific judgment on all theories about trends in the international society: 'If, and if so, in what form the society of States will develop beyond the present type which is characterized by the mere co-ordination of States, is a question which cannot be answered on a scientific basis and is a matter of political consideration and of personal conviction.'⁴

¹ See, for a searching analysis, N. Elias, *Ueber den Prozess der Zivilisation*, Basel, 1939 (2 vols.).

² C. van Vollenhoven, *The Law of Peace*, London, 1936.

³ *ibid.*, p. 253.

⁴ Max Huber, *Die soziologischen Grundlagen des Völkerrechts*, Berlin, 1928, p. 84.

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The reason why again and again the human mind tends to relate the international society to the state of organization reached by national communities lies in the blatant contrast between both groups. The fact that groups of such diametrically different structures can live side by side, and be ultimately composed of the same individuals, is something which is too paradoxical to appeal immediately as the explanation of this phenomenon. Yet this difference is quite familiar in a narrower circle. Herbert Spencer drew attention to the fact 'that nature's modes of treatment outside and inside the family group are diametrically opposed to one another'.¹ Confirming this experience, Russell reports that 'in China, family business often succeeds because of Confucian loyalty to the family, but impersonal joint stock companies are apt to prove unworkable because no one has any compelling motive for honesty towards the other shareholders'.² While the international society forms an activity area which is the scene of the conflicts between the powers, of their compromises and their wars, the sentiment areas with which intensive loyalties are associated fall short in scope of universal extension and are at present limited to the various world powers, nation States and other communities which all are restricted to narrower circles and often themselves adopt an attitude of exclusiveness.³

The cleavage between these various sentiment areas and the global activity area presents one aspect of the problem of international order. In addition, the difference in pace between the rapid progress of economic interdependence and of technique and the much slower growth of mental capacities has opened another gulf which waits to be bridged.⁴ To bring about this double conformity is *the* constructive task and *the* problem of our century.

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¹ Herbert Spencer, *The Man versus the State*, London, 1892, p. 354.

² Bertrand Russell, *Power*, London, 1938, p. 24.

³ H. D. Lasswell, *World Politics and Personal Insecurity*, New York, 1935, pp. 10 *et seq.*, and Sir Alfred Zimmern, *Nationality and Government*, London, 1918, pp. 23-4.

⁴ H. G. Wells, *The Fate of Homo Sapiens*, London, 1939.

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PART TWO

POWER POLITICS IN DISGUISE

CHAPTER 13

PROBLEMS BEFORE THE PEACE MAKERS OF 1919

IN a system of power politics, the international revolutions of major or world wars are followed by constitutional charters laid down in the peace treaties that follow them. The Treaties of Westphalia (1648) and of Paris (1815) form the two most outstanding examples of this category. Their purpose does not merely consist in gathering the harvests of won battles, for it is left to the victorious side to lay down the law and to provide the framework for the peaceful relations of the future, as the uncertain interval between two major upheavals is customarily called. After the first World War, the Allied and Associated powers were faced with this rather formidable task. This work was not made easier by promises given liberally to all by all belligerents nor by expectations raised that this war was fought to end war and to establish 'just democracy throughout the world'.¹

It is easy to condemn the Statesmen who have made these verbal concessions, but it is hardly fair to do so without allowing for the position of necessity in which they found themselves. The war was fought originally on the familiar pattern of a balance of power war since the localization of the conflict had become clearly impossible, following Germany's invasion of Belgium.² Yet the fact that, from the outset, powers with world-wide possessions and interests were involved and that by 1914 the international society had developed into *one* activity area³ transformed that war into the first world war of history. The limitless hardships and sacrifices which the war brought in its train made it necessary to appeal to the imagination of those who had to undergo those privations, by the appeal to vistas and visions which formed an obvious contrast to the blatant tragedy and misery of Armageddon.

¹ Proclamation of the Armistice with Germany by President Wilson, November 11th, 1918, in James Brown Scott, *Official Statements of War Aims and Peace Proposals*, Washington, 1921, p. 474. See also G. Lowes Dickinson, *Documents and Statements relating to Peace Proposals and War Aims*, London, 1919.

² See G. P. Gooch, *Recent Revelations of European Diplomacy*, London, 1940, pp. 465 *et seq.*

³ See, above, Chap. 12.

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While in all wars fought during the nineteenth century, including the Napoleonic Wars, the American Civil War and the Balkan Wars of 1912 to 1913, the number of dead amounted to $4\frac{1}{2}$ millions,¹ the toll of the World War was $8\frac{1}{2}$ millions killed, 21 millions wounded, and, according to the compilations of the United States War Department, the total of casualties of all belligerents comprised 38 millions.²

When war broke out the hopes of millions who had set their faith in the devices of the Hague Conferences, or in a general strike to be declared by the Second International, were shattered to pieces. In the course of the war the social structure of all countries, belligerent and neutral alike, underwent far-reaching changes. By 1917, the autocracy of Czarism had broken down and was replaced by a revolutionary government which professed to exercise its dictatorship in the interest of workers and peasants. In the autumn of 1918, the three empires of the Central powers crumbled to pieces. In those surroundings, even the most submissive creature could not help, in the long run, beginning to wonder and inquire into the causes and purposes of this upheaval. The masses began to move and became restive. Thus even the most cautious and conservative Statesmen in all countries had to assimilate the war objectives as defined in their secret agreements, drawn up in the best traditions of power diplomacy,³ to the trend of popular feeling. The attitude of the man in the street finds its eloquent expression in the Memorandum on War Aims adopted by the Inter-Allied Labour and Socialist Conference at Berne in February, 1918: 'Whoever triumphs, the people will have lost unless an international system is established which will prevent war. What would it mean to declare the right of peoples to self-determination if this right were left at the mercy of new violations, and were not protected by a super-national authority? That authority can be no other than the League of Nations, in which not only all the present belligerents, but every other independent State should be pressed to join.'⁴

Even at that stage when President Wilson, backed by the enthusiasm and might of the U.S.A., seemed to be the trusted champion of 'a

¹ E. L. Bogart, *Direct and Indirect Costs of the Great World War*, New York, 1919, p. 270.

² R. H. Lyman, *The World Almanac and Book of Facts for 1929*, New York, p. 837. See, on the financial costs, Gustave Le Bon, *The World in Revolt*, London, 1921, pp. 132 *et seq.*, and James T. Shotwell, *What Germany Forgot*, New York, 1940.

³ F. Seymour Cocks, *The Secret Treaties and Understandings*, London, 1918, and Gooch, *l.c.*, particularly pp. 161 *et seq.*

⁴ Edith M. Phelps, *Selected Articles on a League of Nations*, New York, 1918, p. 140.

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general association of nations . . . for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike',¹ scepticism raised its head. Viscount Grey dealt in an address delivered in London in October, 1918, with this 'realistic' opposition: 'One of the objections I find to a League of Nations is this – that people say "You have had these schemes before. Why should they come to anything now?"'² The uniform reply of the governments – and those of the Central powers hastened to follow suit, if with some hesitation – may be given in Wilson's words: 'What we seek is the reign of law, based upon the consent of the governed and sustained by the organized opinion of mankind.'³

The urgency of the need for action on the side of the governments who were faced with the problems of huge demobilized armies, of the transformation of war into peace economies, and with a world generally impoverished by the enormous wastage of four years, was increased by the fears of the effects of Russian communism on Germany and the working classes in the Allied countries. Winston Churchill argued before the Supreme Council on February 15th, 1919, in a manner which does not appear out of date in present circumstances: 'If Russia is permitted to remain Bolshevik, Germany could derive from her those resources which she lost through the loss of her colonies and through her defeat on the Western front.' Unless Russia 'formed a living part of Europe, unless she became a living partner in the League of Nations, there could be neither peace nor victory.'⁴ Lloyd George felt equally aware of this danger: 'The whole of Europe is filled with the spirit of revolution. There is a deep sense, not only of discontent, but of anger and revolt, amongst the workmen against pre-war conditions. The whole existing order in its political, social and economic aspects is questioned by the masses of the population from one end of Europe to the other. . . . If Germany goes over to the Spartacists, it is inevitable that she should throw in her lot with the Russian Bolsheviks. Once that happens all Eastern Europe will be swept into the orbit of the Bolshevik revolution, and within a year we may witness the spectacle of nearly three hundred million people organized into a vast red army under German instructors, and German generals equipped with German cannons and German

¹ Point Fourteen of Wilson's Fourteen Points, contained in his address of January 8th, 1918.

² Phelps, *l.c.*, p. 86.

³ Woodrow Wilson, Fourth Point of his address at Mount Vernon, July 4th, 1918, in Ray Stannard Baker, *Woodrow Wilson and World Settlement*, London, 1923, Vol. III, p. 46.

⁴ D. H. Miller, *My Diary at the Conference of Paris*, 1928, Vol. XIV, p. 448.

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machine guns and prepared for a renewal of the attack on Western Europe.¹ The double policy of Allied intervention in the Russian civil war and of a League, endowed with an international Labour Organization, was to be the Allies' answer to the Communist challenge.²

In modelling the League the establishment of a collective system, capable of preventing war, was the object. But the delegates were obsessed with the fear of creating anything resembling a super-State or federation.

General Smuts, to whom the Conference also owed the mandate principle,³ and the formula for the admission of India, although not yet a fully self-governing dominion at that stage,⁴ thought a golden mean could be found between the super-State and the debating society: 'Let us proceed at once to discard the idea of a super-State which is in the minds of some people. No new super-sovereign is wanted in the new world now arising. States will have to be controlled not by compulsion from above, but by consent from below. Government by consent of the governed is our formula. . . . But while we avoid the super-sovereign at the one end, we must be equally careful to avoid the mere ineffective debating society at the other end. The new situation does not call for a new talking shop. We want an instrument of government which, however much talk is put into it at the one end, will grind out decisions at the other end. We want a League which will be real, practical, effective as a system of world government.'⁵

The work of the Drafting Committee, and its draft of February 14th, 1919, was based on the co-operative principle, as Rappard called the alternative to international government proper.⁶ Nevertheless, as a critic of this draft remarked at the time, 'it is full of expressions and phrases which suggest the governmental idea and which not only tend to obscure the proper functions of the League, but introduce a dangerous ambiguity'.⁷ In deference to those comments, the term 'decide' was watered into 'recommend' in so far as

¹ Memorandum of March 25th, 1919, quoted by Harold Temperley, *A History of the Peace Conference of Paris*, London, 1924, Vol. VI, pp. 579-80.

² See K. W. Davis, *The Soviets at Geneva*, Geneva, 1934, pp. 15 *et seq.*

³ J. C. Smuts, 'The League of Nations. A Practical Suggestion', in D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. II.

⁴ See the present writer's *The League of Nations and World Order*, London, 1936, p. 136.

⁵ Miller, *l.c.*, Vol. II, p. 38.

⁶ William E. Rappard, *The Geneva Experiment*, London, 1931, p. 34.

⁷ Miller, *l.c.*, Vol. I, p. 363.

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the contemplated activities of League organs were concerned. The 'Executive Council' was reduced to 'Council', and the 'Body of Delegates', reminding the protagonists of national sovereignty too strongly of a legislative organ, was called 'Assembly'.¹

The idea of representing the peoples in the organization of the League was put forward at the International Labour and Socialist Conference at Berne in February, 1919, and accepted by that body: 'Representation in the central organ of the League shall be not by delegates of the executive branches of the governments of the constituent States, but by delegates from the Parliaments representing all parties therein, ensuring thus, not an alliance of cabinets or governments, but a union of peoples.'² The German Government's Draft for the establishment of a League of Nations contains a similar suggestion,³ but was only submitted to the Peace Conference at a date when the Drafting Commission had finished its labour.⁴ The uncertainty of the Commission and its willingness to give way to strong popular pressure was clearly brought out in one of its reports: 'The Committee considered whether it would be possible to bring the League into more direct relations with the peoples of the State members of the League. They found great difficulty in devising any satisfactory plan for the purpose and they do not recommend the inclusion in the Covenant of any Article of this kind at the present moment. If, when the scheme is laid before the public, there should be manifest a strong feeling that something of the kind should be done, the matter might be reconsidered. It is suggested that reference to the point might be made when the convention is proposed to the Plenary Conference.'⁵

One of the arguments put forward against an international legislature is so delightful that it merits quotation in full: 'This assembly of an international parliament will be a beautiful audience indeed. There is not a parliamentarian, there is not a party leader, there is not an orator in all the parliaments of the world who will not have the ambition to sit in this great international parliament and make a speech, and I believe that instead of having a dignified and serious-minded assembly, you will have a big unwieldy parliament before which will be brought all sorts of questions, where every political party will try to realize its ideal and to announce to the world its platform.

¹ Miller, *l.c.*, Vol. I, pp. 363-4, 372, 392.

² *ibid.*, p. 273.

³ Articles 5 and 10, *ibid.*, Vol. II, p. 746.

⁴ *ibid.*, Vol. I, pp. 537 *et seq.*

⁵ *ibid.*, p. 274.

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For these reasons I am of the opinion that only inconveniences can come from this proposal.¹ In accordance with this policy of 'realism', the term 'constitution', which sounded too much like a document of public law, gave way to 'Covenant',² and the description of the collective system as a 'League of Nations' was preferred to its denomination as a 'Union', a term which rather indicated that 'the Commission was going further than it really was going'.³ Finally, the title of the head of the League's Secretariat was changed from 'Chancellor' into 'Secretary-General' and even this business-like title was subjected to the searching inquiry whether any deep meaning was implied in the fact that the adjective was placed 'after the noun, as in the French'.⁴

In this atmosphere, the suggestions made by the French delegation for an international police force did not fall on fertile ground.⁵ Whereas the idea of an international legislature had been vetoed at least partly on the grounds of the difficulties of devising such machinery, Lord Cecil, as the Chairman of the Commission, based his disagreement with this suggestion on a different argument: 'We have done all we could not to frighten the public opinion of our respective countries. I understand very well the idea of the French; but, if we try to do too much we shall accomplish nothing.'⁶

The purposes of the contemplated League were formulated by the Plenary Peace Conference on January 24th, 1919, in the following terms: 'It is essential to the maintenance of the world settlement which the associated nations are now to establish that a League of Nations be created to promote international co-operation, to ensure the fulfilment of accepted international obligations and to provide safeguards against war.'⁷

The rejection of the idea of international government in the proper sense, including anything in the nature of a federation,⁸ made it necessary for the drafters of the Covenant to look round for more familiar patterns.

These were provided by forms of international organization which had developed in the pre-1914 international society. Co-operation in the sphere of international communications (The Universal Postal

¹ M. Hymans (Belgium), in the ninth meeting of the Drafting Commission, Miller, *loc. cit.*, Vol. I, p. 232.

² *ibid.*, p. 205.

³ *ibid.*, p. 142. See also pp. 134-5.

⁴ *ibid.*, pp. 220-1.

⁵ *ibid.*, Vol. II, pp. 241 *et seq.*, and pp. 292 *et seq.*

⁶ *ibid.*, Vol. I, p. 259.

⁷ Quoted by William E. Rappard, *International Relations as Viewed from Geneva*, New Haven, 1925, p. 9.

⁸ See, below, Chap. 29.

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Union, Berne, 1874,¹ in the scientific field (The Geodetic Union, 1886),² in matters of health (The International Health Office, Paris, 1907),³ and, to a more limited extent, in the economic sphere (The International Sugar Union, Brussels, 1902),⁴ and related activities were compatible with the prevailing system of power politics; for these international institutions limited themselves to the promotion of interests which were both universal and irrelevant from the standpoint of the rule of force.⁵ Unions of this kind even serve the additional purpose of feigning a semblance of international organization, and they assist in the maintenance of the illusion that war is merely an unfortunate accident or an event beyond human control.⁶ Similarly, the pre-1914 inter-State system provided the conception of conferences between the powers of the 'Concert', the Monroe doctrine which could be 'reformed and universalized',⁷ the procedures of fact-finding bodies, conciliation and arbitration, as developed by the Hague Conferences, intervention on the part of the Greater powers and even futile talks on disarmament.⁸

The intensified collaboration between the Allied and Associated powers, forced upon them by the ever-increasing strain of the World War, produced further experiences in this field and brought about international co-ordination at least for the time being to an extent which was as uncommon in the international sphere, as the measures of wartime socialism were strange intrusions in a system of liberal economy. The first World War induced the belligerents on both sides to subordinate their sectional interests in all spheres, politics, economics, finance, communications, and military operations, to the supreme goal of victory.⁹ Therefore, compared with the degree of integration which had been achieved during the war in both camps, the League of Nations which actually emerged out of the deliberations of 1919 was

¹ See the delightful description by Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, p. 40 *et seq.*

² Clyde Eagleton, *International Government*, New York, 1932, p. 255.

³ L. S. Woolf, *International Government*, London, 1916, pp. 221 *et seq.*

⁴ William S. Culbertson, *International Economic Policies*, New York, 1925, p. 417.

⁵ See, above, Chap. 10.

⁶ Compare the Preambles of the Hague Conventions of 1899 (II) and 1907 (IV) concerning the Laws and Customs of War on Land.

⁷ Zimmern, *l.c.*, p. 265. See also Karl Schmid, 'Der Völkerbund', in *Handwörterbuch der Theologie und Rechtswissenschaft*, Tübingen, 1932 (Vol. V), col. 1,608.

⁸ See Zimmern, *l.c.*, pp. 13 *et seq.*, and, above, Chap. 10.

⁹ Compare the *Report of the War Cabinet for the Year 1918*, London, 1919 (Cmd. 325); Sir Arthur Salter, *Allied Shipping Control. An Experiment in International Organization*, New York, 1921; H. G. Greaves, *The League Committees and World Order*, London, 1931, *passim*; and Zimmern, *l.c.*, pp. 137 *et seq.*

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anything but a step forward towards supra-national government. It was a measure of demobilization in international organization.

Thus, in the official British Commentary on the Covenant, the importance of this international charter was not understated when it was described as 'a solemn agreement between sovereign and independent States which consent to limit their complete freedom of action on certain points for the greater good of themselves and the world at large'.¹ Nevertheless, had the world in 1919 and after been imbued with the indomitable resolution 'to achieve international peace and security',² the League system would have provided a logical and practical framework for the realization of these objects.

The drafters of the Covenant started from the assumption of a world-wide League of Nations which would not be unduly hampered by the existence of outsiders.³ They recognized that if war was to be effectively kept in check it was necessary to establish a comprehensive system for the settlement of international disputes, including the thorny problem of peaceful change.⁴ It was equally sensed that the dynamic clauses of the Covenant had to be counter-balanced by measures for the maintenance of the territorial independence and integrity of the members of the League, and that this could only be adequately achieved by adherence to the principle of international security.⁵ Finally, this equilibrium was to be made possible both practically and psychologically by far-reaching limitations of national armaments.⁶ As will be shown in greater detail later on, nowhere was this interdependence between the three pillars of the League structure carried to its logical conclusions in the text of the Covenant. This document provided, however, an adequate framework for the League members to do so whenever they were prepared to go beyond the bare minimum of the legal obligations which they had undertaken by signing the Covenant. Thus, if one looks only at the Covenant, there certainly existed the opportunity of transforming the pre-1914 international society into a community and replacing power politics by the rule of law.

Yet it would be fatal only to see this one aspect of the Peace Treaties

¹ Cmd. 151, London, 1919, p. 12. See also Lord Cecil's remarks on this subject in the meeting with the neutral States, Miller, *l.c.*, Vol. I, p. 30; the discussions in the twelfth meeting of the Drafting Commission, *ibid.*, pp. 331 *et seq.*; and George W. Keeton, *National Sovereignty and International Order*, London, 1939, p. 34.

² Preamble of the Covenant. See also the present writer's *The League of Nations and World Order*, London, 1936, pp. 129 *et seq.*

³ See, below, Chap. 14.

⁵ See, below, Chap. 17.

⁴ Compare, below, Chaps. 15 and 16.

⁶ Compare, below, Chap. 18.

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of 1919 which have to be read as a whole. While it cannot be denied that Articles 1 to 26 of these treaties are imbued with a community outlook, the rest of these treaties breathes a different spirit. It has been doubted whether it was wise to embody the Covenant into the Peace Treaties. The reasons put forward by President Wilson in favour of this connection in his Liberty Loan Address at New York on September 27th, 1918, are perfectly reasonable: 'As I see it, the constitution of that League of Nations and the clear definition of its objects must be a part, is in a sense the most essential part, of the peace settlement itself. If formed now, it would be merely a new alliance confined to the nations associated against a common enemy. It is not likely that it could be formed after the settlement. It is necessary to guarantee the peace; and the peace cannot be guaranteed as an afterthought.'¹ There were also weighty tactical reasons for this combination which increased the more time went on. The President's domestic position had become less stable and he could only hope to secure the acceptance of the Covenant if a refusal also meant the non-ratification of the Peace Treaties. Similar difficulties in other countries could, as it seemed then, be avoided by this device. Finally, the tasks entrusted by the Peace Treaties to the League would from the start make the collective system a reality, and the fact that these matters were taken out of the hands of the parties concerned would guarantee more impartial solutions.²

Actually, this whole discussion only touches the fringe of the real problem. For if both the Covenant and the Peace Treaties had been imbued with the same community spirit it would not have made the slightest difference whether these two parts of the Peace Treaties were or were not embodied in the same document. If they were incompatible in their essential conceptions and objects, this discrepancy could not have been overcome by a mere separation of the texts. The decisive question, therefore, is whether the Peace Settlements can be charged with a duality of purpose and interests. This is strongly asserted by Ray Stannard Baker: 'No nation would listen to the President's warning of the danger of such a course; that it was impossible with one foot in the Old Order and the other in the New to arrive anywhere. Thus France wanted for her security all the

¹ Pierce H. Duggan, *The League of Nations. The Principle and the Practice*, London, 1920, pp. 70-1.

² C. K. Webster and Sydney Herbert, *The League of Nations in Theory and Practice*, London, 1933, p. 41, and C. K. Webster, 'Vorschläge für eine Revision der Völkerbundssatzung', in *Völkerbund und Völkerrecht*, Berlin, 1934, pp. 80-1.

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advantages of the new guarantees of the League, and at the same time all the advantages of the old militarism and the old diplomacy – an army on the Rhine. Even America was eagerly willing to accept all the advantages of the Versailles Treaty, and yet wished to retain and enjoy all the rights and privileges of isolation – a position utterly absurd.¹

It cannot be said that to draw attention to these contradictions is merely a case of wisdom after the event. For though President Wilson himself sinned later on, against his own better judgment,² he repeatedly and in time expressed public warnings against attempts to resort again to the outworn methods of power politics. In his speech in the Metropolitan Opera House of September 27th, 1918, he laid down four principles of an international community. First, a settlement of this kind must be based on justice, not on recrimination against the vanquished. Second, ‘no special or separate interest of any single nation or any group of nations can be made the basis of any part of the settlement which is not consistent with the common interest of all’. Third, ‘there can be no leagues or alliances or special covenants and understandings within the general and common family of the League of Nations’ nor, fourth, selfish combinations of this sort in the economic sphere.³

The President struck hard at the conception of the balance of power which embodied for him power politics with all its implications: ‘They fought to do away with an old order and to establish a new one, and the centre and characteristic of the old order was that unstable things which we used to call the “balance of power”, a thing in which the balance was determined by the sword which was thrown in on the one side or the other, a balance which was determined by the unstable equilibrium of competitive interests, a balance which was maintained by jealous watchfulness and an antagonism of interests which, though it was generally latent, was always deep seated. The men who have fought in this war have been the men from the free nations who are determined that that sort of thing should end now and for ever. It is very interesting to me to observe how from every quarter, from every sort of mind, from every concert of counsel there comes the suggestion that there must now be not a balance of power,

¹ Baker, *l.c.*, Vol. II, pp. 226–7.

² Harold Temperley, *A History of the Peace Conference of Paris*, London, 1924, Vol. VI, pp. 576–7.

³ Charles Seymour, *The Intimate Papers of Colonel House*, London, 1926–8, Vol. IV, pp. 70–1.

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not one powerful group of nations set up against another, but a single, overwhelming, powerful group of nations who shall be the trustees of the peace of the world.¹ Wilson repeated this warning at the Plenary Session of the Peace Conference on January 25th, 1919:

'We are here to see, in short, that the very foundations of this war are swept away. Those foundations were the private choice of small coteries of civil rulers and military staffs. Those foundations were the aggression of great powers upon small. Those foundations were the holding together of empires of unwilling subjects by the duress of arms. Those foundations were the power of small bodies of men to work their will upon mankind and use them as pawns in a game. And nothing less than the emancipation of the world from these things will accomplish peace.'²

This was not, however, the view which prevailed at the Peace Conference. The former Central Powers were for the time being excluded from membership in the League of Nations.³ Most severe was the treatment meted out to the German Republic. The Rhinlands were occupied. Extensive unilaterally neutralized zones were imposed upon the vanquished enemy. The German army was unilaterally disarmed, military conscription was prohibited to Germany, and all her Eastern neighbours were drawn into a French network of political and military agreements. Germany was deprived of territories in which the majority of the inhabitants were German-speaking, of her merchant fleet, foreign assets and her colonies. Reparations were decreed which could hardly be regarded as reasonable, and far-reaching unilateral advantages in Germany were secured for the victors.⁴ The hegemony of France thus established over the continent of Europe was characterized as follows by André Geraud ('Pertinax'):

'The first period, that of French preponderance, lasted from the conclusion of the peace treaties until October 1933, that is to say, until Germany broke with the League of Nations, abandoned the Disarmament Conference and left the International Labour Organization. During these thirteen or fourteen years, the French Army was superior to any other in Europe. It held the Rhine (until the summer of 1930)

¹ Wilson's speech in London, December 28th, 1918, in President Wilson's *Great Speeches and Other History-Making Documents*, New York, 1919, pp. 413-4. Compare also his address of December 30th, 1918, at the Free Trade Hall in Manchester, in Denna Frank Fleming, *The United States and the League of Nations, 1918-1920*, New York, 1932, p. 100.

² Miller, *l.c.*, Vol. II, p. 157.

³ Compare the present writer's *The League of Nations and World Order*, London, 1936, pp. 73 *et seq.*

⁴ Compare Foreign Office, *Indemnities of War*, London, 1920.

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and by virtue of the demilitarization clauses of the Versailles Treaty knew that it could penetrate into the Rhineland without meeting any serious obstacle. It was able to immobilize the German Army and render it incapable of any action in the East.¹ The reader may therefore find it difficult to agree with a recent writer who suggests that 'there has surely seldom or never been constructed a peace of a more idealistic character'.²

Thus the League of Nations was established, not only, as Wilson had feared, side by side with a balance of power system, but it co-existed together with a hegemony founded essentially on the armed superiority of those neighbours of Germany who were interested in the maintenance of the territorial *status quo* created by the Peace Treaties. As Wilson had foreseen, one or the other system had to give way. The Peace Conference was free to create an international society or a supra-national community. It was, however, even beyond the powers of the peace makers to produce a hybrid capable of achieving peace. For this term has a different meaning in a system of power politics and in a community proper.³

It would not be fair to take up an attitude of Pharisaic hypocrisy against the work of a Conference which had to perform its work in highly difficult circumstances. Haste, improvisation⁴ and confusion⁵ are factors which must not be underestimated.

Equally the cases of precedence, created at Bucarest and Brest-Litovsk by Imperial Germany in methods and objects of peace-making, are aspects which ought to be remembered.⁶ Last, but certainly not least, one must allow for the feelings of hate, revenge and retribution which are only a natural and human reaction after an ordeal such as a world war. Yet if allowance is made for all these mitigating circumstances, it seems that Tawney's judgment on the work of the peace-makers of 1919 is final and conclusive:⁷ 'The test of the objects of a war is the peace which follows it. Millions of human beings endured for four years the extremes of misery for ends which

¹ André Geraud ('Pertinax'), 'Eastern Europe: Vassal or Free', in *Foreign Affairs*, New York, 1938, pp. 403-4. See also *The Round Table*, 1935, No. 100, pp. 660-1.

² G. M. Gathorne-Hardy, *A Short History of International Affairs, 1920-1938*, London, 1938, p. 12.

³ See the present writer's *William Ladd: An Examination of an American Proposal for an International Equity Tribunal*, London, 1935, pp. 38 et seq.

⁴ Robert Lansing, *The Peace Negotiations*, London, 1921, pp. 137-8, 172.

⁵ Harold Nicolson, *Peace-Making, 1919*, London, 1933, p. 6.

⁶ Compare N. Jorga, *A History of Roumania*, London, 1925, and John Wheeler-Bennett, *Brest-Litovsk. The Forgotten Peace*, London, 1938.

⁷ R. H. Tawney, *The Acquisitive Society*, London, 1927, p. 224.

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they believed to be but little tainted with the meaner kinds of self-interest. But the historian of the future will consider, not what they thought, but what their statesmen did. He will read the Treaty of Versailles; and he will be merciful if, in its provisions with regard to coal and shipping and enemy property and colonies and indemnities, he does not find written large the *Machtpolitik* of the Acquisitive Society, the natural if undesired, consequence of which is war.'

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CHAPTER 14

THE UNIVERSALITY OF THE COLLECTIVE SYSTEM

THE problem of the universality of an organization is complementary to the problem of the non-participant. The goodwill of the outsider seems as important in most groups and movements as the unquestioned loyal collaboration of its actual members, for his lack of interest, or even active hostility, may involve the failure of the whole scheme or at least provide a convenient excuse for members who are reluctant to make the sacrifices necessary for the common good.

The existence of an organization which rests on a wide or even universal basis depends on three conditions. First, the entities of which it is composed must be able to establish contact when common effort is required; second, there must be some impulse to collaboration, such as ambition, fear, economic necessity or common religious and political bonds; third, the strength of these interests must be great enough to break down the resistance of inertia and to counter any centrifugal forces.

Frequent attempts have been made, from antiquity until our own times, to establish international organizations on a universal basis. They have been founded for the promotion of various ends, from power politics to the establishment of world peace, and by various means, ranging from brutal domination to collaboration on a footing of equality.¹ It may be helpful to begin by classifying the different types of universality which have been attempted in the inter-State system.

I. The structure of the collective system as a *whole* may be taken as the criterion, and may either be *imperial* or *co-operative*.

(a) Imperial universality has been achieved or considered capable of achievement in the form of a single world empire based on

¹ Compare for a more exhaustive treatment of the questions discussed in this chapter the present writer's *The League of Nations and World Order. A Treatise on the Principle of Universality in the Theory and Practice of the League of Nations*, London, 1936.

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coercion from above. To this category belong the Roman Empire, which comprised the whole of the then known civilized world, and the Christian Commonwealth of the Middle Ages, whose head was regarded as *dominus urbis et orbis*.¹

(b) Universality may also be based on free will. If members unite on an equal footing in order to achieve a world organization their end is reached by means of co-operative universality. The scheme proposed by William Penn in his *Essay towards the Present and Future Peace of an European Dyet, Parliament or Estates* (1693)² was based on this conception.

II. In view of the varying constitutional structures of the *individual* communities of which the international society is composed, a collective system may also aim either at *homogeneous* or *heterogeneous* universality.

(a) If the collective system comprises only communities having similar constitutional structure or political outlook, it aims at homogeneous universality. Kant's plan (*Zum ewigen Frieden*)³ limits membership in his League to republics.

(b) If conformity to this criterion is not demanded, the organization aims at heterogeneous universality. Crucé's project (1625),⁴ for instance, emphasizes the fact that this type of universal organization is possible as well as desirable.

III. According to its proposed functions, an organization may aim either at *absolute* or *relative* universality.

(a) A collective system which aims at absolute universality, demands the inclusion of all communities, great and small, important and unimportant. A league whose membership is to embrace all the States of the world, is an illustration of this type.

(b) The collective system may also be based on the principle of relative universality. This is the case when it limits membership or co-operation only to those communities ('key' or essential States) which might endanger the attainment of its aim if they remained aloof. A league which comprised, or at least could count on the collaboration of all the States indispensable for the accomplishment of its ends would meet the requirements of relative universality.

¹ See, above, Chap. 8.

² Reprinted at Gloucester, 1915.

³ Translated by Helen O'Brien, London, 1939.

⁴ Crucé, Emeric, *Le Nouveau Cynée*, translated by Thomas Willing Balch, Philadelphia, 1909.

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IV. Finally, a further distinction from the standpoint of its functions may prove helpful, and is essential in the light of League policy in the last few years: the distinction between *formal* and *material* universality.

(a) Universality is formal when it is sought for the sake of universality itself or for reasons not primarily connected with the proper working of a league system. The League of Nations, which was anxious to assure the continued membership of countries such as Italy and Japan irrespective of their violations of the covenants of the collective system, aimed at formal universality.

(b) A league limited to the membership of the greatest possible number of States, but only of those which are prepared to keep their pledges, aims at material universality.

Since the failure of Napoleon's attempt to establish a system of imperial domination, this alternative to a co-operative league has never seriously been considered until Hitler propounded his 'new' world order. Although the concept of equality was accepted in principle in the League of Nations,¹ and even self-governing dominions and colonies were declared eligible for membership, the problem of pre-War imperialism had to be faced, as certain members of the League still possessed huge colonial empires. Wilson himself never seriously intended to open the question of colonies as a matter of principle.² He contented himself with securing the application of the conception of trusteeship over backward nations to the German colonies and to the territories which had been taken from the former Turkish Empire. Although the Peace Conference did succeed in introducing the new principle, it was only at the cost of exempting the possessions of pre-War imperialism which time had converted into legitimate units.

The treatment of other cases by the Peace Conference was still more obviously in contradiction to the principle of co-operative universality.³ One difficulty with which the Conference was faced was the need for the admission of India to the League at the British request while excluding the Philippine Islands in accordance with the wishes of President Wilson. India, although she was not yet a fully

¹ See, below, Chap. 22.

² Compare the official American Commentary of October, 1918, on the Fourteen Points, in Charles Seymour, *The Intimate Papers of Colonel House*, London, 1926-8, Vol. IV, p. 198.

³ See for a full discussion of these cases the present writer's *The League of Nations and World Order, l.c.*, pp. 36 *et seq.*

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self-governing dominion or colony, was admitted in accordance with Article 1, paragraph 1, of the Covenant as a signatory to the Peace Treaties, whereas the Philippine Islands, which did not belong to this category, were excluded on the ground that they had not yet attained full self-government. Again, Costa Rica, although it had declared war on Germany, was not invited to the Peace Conference and therefore could not join the League as a signatory. The reason was, as also in the case of Mexico and San Domingo, neither of which was asked, with the rest of the neutral powers, to accede to the Covenant, that the governments of these countries were not recognized by all of the Big Five, who feared that invitation to membership in the League might be construed as recognition. From the doctrinal point of view, it is interesting to note that the three smallest European States, Luxemburg, Lichtenstein and Monaco, were also refused admission to the League by the Peace Conference. The principle of co-operative universality therefore seems to have been applied in the drafting stage of the Covenant with reservations which are hardly in keeping with the objects of this collective system. Later, however, League practice made good these particular omissions by admitting the excluded countries in accordance with Article 1, paragraph 2, of the Covenant.¹ At the Twelfth Assembly, in connection with the admission of Mexico, the Spanish delegate called the state of mind, which had been responsible for their initial exclusion, the 'reason of unreason'.²

Turning to the distinction between heterogeneous and homogeneous universality, there was a strong tendency to assert that membership should be limited to democratic States. In his War Message of April 2nd, 1917, President Wilson expressed the belief that 'no autocratic government could be trusted to keep faith with it [a concert of peace] or observe its covenants . . . only free peoples can hold their purpose and their honour steady to a common end and prefer the interests of mankind to any narrow interest of their own'.³ This idea found its expression in Article 1, paragraph 2, by which admission to the League was limited to 'fully self-governing' States, dominions or colonies, unless they were either signatories to the Peace Treaties or neutral States enumerated in the Annex to the Covenant.

This sympathy for democratic homogeneity was intermingled with the general fear of Bolshevism, to which, it was hoped by Lloyd

¹ See the present writer's *The League of Nations and World Order*, pp. 59 *et seq.*

² *Records of the Twelfth Assembly (1931), Plenary Meetings*, p. 35.

³ Denna Frank Fleming, *The United States and the League of Nations, 1918-1920*, New York, 1932, pp. 18-19.

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George, Clemenceau and Wilson, the League would provide an antidote.¹ Since Chicherin had informed Wilson that the U.S.S.R. could not participate in the League of Nations unless the other powers were prepared to adopt 'the expropriation of the capitalists of all countries as another of the basic principles of the League of Nations',² there was no reason to suppose that the U.S.S.R. would seek hasty admission to membership. Nevertheless, until the final breakdown of the policy of intervention pursued by the Allied and Associated Powers, the Conference still cherished the hope of the eventual membership of a White Russia under the disguise of the forms of Western democracy. After the victory of Bolshevism in the Civil War, hopes for the early entry of the U.S.S.R. into the League were finally blighted by the inclusion in the Soviet constitution of a counter-Covenant which gave the right of entry into the U.S.S.R. to all actual and future Socialist Soviet Republics, which were eventually to form the Socialist World Soviet Republic.³

Although the entry of Russia into the League provides the most striking example of the abandonment of the principle of homogeneity as understood in 1919 in favour of indiscriminate heterogeneity, there were precedents for this change of policy. Even in the early years of the League it had become customary for the commission charged by the Assembly with the examination of candidates for admission to construe the term 'fully self-governing' as synonymous with 'sovereign'. This practice had crystallized by 1923 when the admission of Abyssinia came under discussion. The Assembly, unanimously accepting the Committee's report, in which it was maintained that this country was 'fully self-governed', admitted Abyssinia to League membership.⁴ To what forces can this *volte-face* be attributed? From the standpoint of a collective system, the membership of countries like the U.S.S.R., Mexico and Turkey is so vital for the proper functioning of any League aiming at universality that their non-co-operation appears a worse evil than the minor disadvantages arising from difference in constitutional structure or political doctrine. Hence, although homogeneity was originally one of the basic principles of the League, considerations of this kind were, in the long run, outweighed by the necessity of achieving as high a degree of relative universality as possible. The League was from the beginning,

¹ See, above, Chap. 13.

² Kathrin Davis, *The Soviets at Geneva*, Geneva, 1934, p. 16.

³ M. W. Graham, *New Governments of Eastern Europe*, New York, 1927, pp. 607 *et seq.*

⁴ See the present writer's *The League of Nations and World Order*, *l.c.*, pp. 87 *et seq.*

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however, a compromise with power politics.¹ It is not therefore necessary to emphasize the fact that the tendency to relative universality results, partly at least, from the same motives as any other combination in the realm of power politics where attention is focused on strength rather than on similarity of outlook and structure. The relations between the U.S.S.R. and the League of Nations provide the example *par excellence* of this thesis. The combination of these tendencies may therefore more realistically be regarded as responsible for the preference of League members for heterogeneous as compared with homogeneous universality.

When the Covenant was drafted, it was regarded as a matter of course that the League would immediately acquire a degree of relative universality sufficient to enable it to work smoothly. The former Central Powers no longer counted as political forces; as signatories of the Peace Treaties, they were bound by the obligations of the Covenant, without the corresponding advantages of membership. The Peace Conference, however, did not anticipate that neither the U.S.A. nor Russia would enter the League of Nations, nor, of course, that Japan would herald a series of secessions. As is rightly stressed in Lord Cranborne's memorandum on the 'Participation of all States in the League of Nations', submitted to the League Reform Committee, 'universality *in vacuo*, so to speak, is meaningless; and the question of a universal League cannot fruitfully be considered apart from the nature of the League which is to be universal'.² If the role of relative universality in the history of the League is to be adequately explained, this aspect needs closer investigation.

In its non-political activities, which have been aptly described by Sir Alfred Zimmern as 'a system of world services functioning through the League secretariates',³ the League did not encounter any particular difficulty in obtaining the collaboration of non-member States.⁴ It examined questions such as the provision of relief to peoples overtaken by disaster, the outbreak of typhus in Russia and other epidemic diseases; the standardization of sera; infantile mortality; the unification of maritime signals; the regulation of air navigation; the simplification of customs formalities and labour problems. No non-member

¹ See, above, Chap. 13.

² League Doc. S.C.P.20, September 8th, 1937, p. 5.

³ Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, pp. 310 *et seq.*

⁴ Compare the present writer's *The League of Nations and World Order*, London, 1936, pp. 310 *et seq.*

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State, however powerful, could hope to solve these questions without the co-operation of the other members of the international society. Nor could anything be gained by restricting discussions to the members of the Geneva system, which could never, throughout its existence, claim to have attained relative universality. In all States, whether members of the League or not, there were interests strong enough to insist upon an attempt being made to solve these problems, and, as long as over-riding objections were not raised on the ground of power politics, minor psychological or legal difficulties could be overcome by plain common sense. Of this the International Labour Organization provides a particularly striking example. In the initial stages it was assumed, on the advice of legal authorities, such as Manley O. Hudson, that only members of the League could belong to the Labour Organization. Gradually, however, exceptions were made in favour of non-members, and States which had resigned from the League were allowed to remain members of the I.L.O. Eventually, the principle was established that whereas membership of the League automatically involved membership of the I.L.O., membership of the I.L.O. did not necessarily depend on membership of the League. Too much, however, should not be deduced from the relative success of the League and the I.L.O. in these spheres. For, even where universal co-operation in the non-political sphere was established, neither of these organizations evolved processes of international co-operation essentially different from those already in use before the world war. The real contribution of the League was the provision of highly efficient machinery for co-operation; this work, in the words of Sir Alfred Zimmern, did not amount to more than the activities of 'a glorified postal union'.¹

Where the success of its primary function – the maintenance of world peace – was at stake, circumstances were by no means so favourable, as they were in the non-political sphere, to the remedying of the defects which resulted from the failure of the League to achieve even relative universality. The complementary system of the Covenant and the Kellogg Pact approached the problem of peace from four different angles: the limitation of the right to resort to war in the Covenant, and the renunciation of war as an instrument of national policy in the Kellogg Pact; peaceful settlement of international disputes, collective security and disarmament. From a theoretical point of view, each of these four principles, if carried to its

¹ Sir Alfred Zimmern, *l.c.*, p. 281.

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logical conclusion, would eliminate war. Is it not sufficient for the realization of the League's objects if all the States which signed the Paris Pact – practically the whole civilized world – intend to keep their promise of renouncing wars of aggression, or if a comprehensive system for the settlement of legal and political disputes is established, if disarmament is generally carried out, or if an overwhelming system of collective security is realized? Assuming for the moment that the collective system is universal, why has it been so difficult to achieve world peace by carrying out *one* of these schemes? By itself, the negative act of renouncing wars of aggression was not, and never can be, sufficient to ensure the maintenance of world peace. For war, while potentially serving all the ends of power politics in a society based on the rule of force, frequently fulfils a function which can as well be performed by more civilized methods as by this primitive means, but which cannot be left undone. This function is to redress any real or alleged grievance which cannot be settled by less drastic means and to alter a *status quo* which is regarded as unbearable by a dissatisfied power.¹ This explains the Covenant's insistence on the provision of machinery for the pacific settlement of international disputes. Such methods were intended to act as a substitute for war.² The League members, however, were not prepared, without exceptions and reservations, to accept the idea of a comprehensive system for settling international disputes by pacific means. No general agreement could be reached even with regard to compulsory arbitration of legal disputes, not to mention political disputes, where war used to perform the function of changing the *status quo*. The insignificant role which Article 19 of the Covenant has played shows that no serious endeavour was made within the framework of the League to tackle the problem of peaceful change.³ The very fact that the negative renunciation of war was not followed up by the positive policy of the pacific settlement of international disputes and of peaceful change doomed provisions for disarmament to failure. Could the States which were not prepared to accept provisions for the settlement of their disputes really be expected to leave them unsolved? In the nature of the problem, if the countries of the world were not prepared to take a step forward they were only too liable to take a step backward, i.e. to return to the pre-1914 system, which meant re-armament and not disarmament.⁴

¹ See, above, Chap. 9.

³ See, below, Chap. 16.

² Compare, below, Chap. 15.

⁴ Compare, below, Chap. 18.

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To complete the vicious circle, could it be expected that a world which, in fact, relied not so much on a collective system as on the armaments of its individual members would establish a collective system of overwhelming force against a potential aggressor? Indeed, if the States were not prepared to devise pacific methods for settling their disputes, it was doubtful whether they were morally justified in setting up a collective force against an aggressor, quite irrespective of the practical difficulties of pursuing such a policy simultaneously with one of re-armament.¹

This cursory survey has already made it clear that in a collective system which renounces wars of aggression at least three further elements are complementary and absolutely indispensable: a comprehensive system for the settlement of international disputes, disarmament and collective security. All three must be realized jointly, or not at all.² It could be argued that in the interest of political prudence it is wise to attempt gradually what the governments or peoples of the world are not yet prepared to solve comprehensively. But it must be understood that this implies a reliance on methods of power politics until all three elements are realized, and, to the extent to which States have resort to these methods, detrimental repercussions on the collective system as a whole are inevitable. The difficulties would exist even if the League had achieved relative universality by the membership of all 'key' States, and they are obviously accentuated by its lack of universality.

We shall now investigate how the non-universality of the League affected its attempts to realize peace by means of the pacific settlement of international disputes, the establishment of collective security and the promotion of disarmament.³

The desire of the League to obtain the collaboration of 'key' States outside its orbit in the pacific settlement of disputes is best illustrated by the various attractions in the form of special privileges by which it was hoped to induce the U.S.A. to accede to the Statute of the Permanent Court of International Justice. Similar tendencies were noticeable when the General Act for the Peaceful Settlement of International Disputes (1928) and the General Convention to Improve the Means of Preventing War (1931) were drafted. The Kellogg Pact, however, proved that League members had already ceased to regard

¹ See, below, Chap. 17.

² Compare, below, Chaps. 23 and 24.

³ Compare for a fuller analysis of these aspects the present writer's *The League of Nations and World Order, l.c.*, pp. 134 *et seq.*

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the League as the exclusive agency for the conclusion of treaties in this field. Even agreements as important as the Locarno Pacts were concluded with little more than formal reference to the League or, as in the case of the Saavedra-Lamas Treaty of 1933, without even this gesture of courtesy.

Similar tendencies can be detected in the settlement of actual disputes between members and non-members alike. The various disputes between American members of the League, as well as the Sino-Japanese conflict, prove that there was a certain consistency in the attitude of the U.S.A.¹ First, the policy of the U.S.A. did not put any obstacles in the way of the League endeavours to achieve pacific settlements. Second, the policy of the U.S.A. aimed at the same ends as that of the League: both wanted the maintenance or restoration of peace. Third, the fact that the activities of the League and the U.S.A. were partly independent of each other, partly the result of improvised consultations without any adequate machinery for co-ordination, neutralized to a certain extent their efforts, which might otherwise have had a cumulative effect.

Whereas in disputes between members the co-operation of a non-member may be of the greatest assistance, the non-member becomes one of the principal factors in disputes between members and non-members. The practice of the League has developed four principles in disputes between members and non-members by which the theoretical claim of the Covenant to establish the League as guardian of world peace has been limited.² First the League refused the requests of non-members to take the initiative in bringing their disputes with members before the League. Second, the right to take the initiative in bringing a dispute between a member and a non-member before the League has been reserved to any member of the League, whether a party to the specific dispute or not. It depended therefore exclusively on their action or non-action whether the Assembly or the Council could deal with such conflicts in a general way under Article 11, paragraph 2, or whether the Council could initiate the procedure under Article 17, paragraph 1, of the Covenant. Third, if a dispute between a member and a non-member State has been brought to the attention of the Assembly or Council, both bodies reserve their complete discretion regarding the course to be adopted.

¹ See for an accurate description of the facts of these disputes, Russell M. Cooper, *American Consultation in World Affairs*, New York, 1934.

² See the present writer's *The League of Nations and World Order, L.c.*, pp. 143 et seq.

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Fourth, after an invitation has been sent to a non-member State in accordance with Article 17, paragraph 1, of the Covenant – and so far there has been only one case of this type – no investigations are carried out by the Council until the invitation is accepted by the non-member State. In disputes between members and non-members, the League did not in practice utilize any of the possibilities of the Covenant by which it was authorized to establish itself as the guardian of world peace, overruling the limitations of international law as it was at that time. Its practice remained in conformity with the rules which had been accepted before the Covenant came into force, i.e. third Powers cannot derive any rights from conventions concluded between other States, and a State is not bound to submit an international dispute to any procedure for a pacific settlement without its express consent. But the League made its action in disputes between members and non-members not only dependent on strict regard for the limitations of international law. Even in cases in which non-members were prepared to submit their disputes with members to the forum of the League, and actually asked for such a settlement, the members of the League, in whose hands it was to decide upon the course to be taken, made their choice in accordance with their incidental interests of national policy, and not in accordance with the requirements of world peace. No matter how well such decisions, which mainly fall in the early period of the existence of the League, can be explained by the difficulties of the then prevailing circumstances, such an attitude was bound to raise doubts in non-member States as to whether the claim of the Covenant for a universal and impartial League was more than a screen for an alliance of powers which were interested in the maintenance of the conditions created by the Peace Treaties.

The third category of disputes, those between non-member States, offers examples of extreme cases in which the League could have shown whether it intended to realize the claim of the Covenant for relative universality in matters concerning world peace. The general attitude of League members at that time was perhaps most clearly expressed in the speech made by Professor Gilbert Murray at the Fifth Assembly in 1924: 'We must beg the sufferers to be patient to the very limits of human patience; we must acknowledge the duty which for the time being we cannot fulfil.'¹ The League has not been able to settle all disputes between its own members, in spite of occasional

¹ *Records of the Fifth Assembly (1924), Plenary Meetings*, p. 159.

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assistance from non-members, and is, in its present stage of non-universality, far from having realized the ambitious claim of the Covenant to be the guardian of world peace.

Can similar tendencies be traced from the activities of the League in the fields of collective security and disarmament?¹ The inseparable relationship between the two was so evident from the very start that the problems were jointly tackled. Even if disarmament were generally agreed upon, insecurity would continue to prevail, to the extent to which the *potentiel de guerre* varies and countries do not receive adequate protection in exchange. Disarmament therefore depends on the realization of collective security. But collective security depends just as much on disarmament, for, even apart from military considerations, a world dominated by a universal arms race lacks the psychological atmosphere which is a *sine qua non* for a system of collective security.

The security system of the Covenant was drafted on the assumption that the U.S.A. would be a member of the League, which would have given it some degree of relative universality at least.² Through the non-co-operation of this State the character of the obligations which had been undertaken by the signatories of the Covenant changed completely. A League predominantly composed of European powers became responsible for peace and security throughout the world, at least, according to the terms of the Covenant. Had the League only included all 'key' States, its threat to use sanctions would probably have been sufficient to prevent war. As it was, however, from the early years of the League until to-day there has always been the possibility that important non-member States might not join the efforts of the collective system, or might even, invoking their rights as neutrals, make it extremely difficult for the members to fulfil their obligations under the Covenant. In view of this fact the Assembly and the Council of the League repeatedly discussed the application of Article 16 of the Covenant in the early years of the League.³ The interpretative resolutions regarding this Article adopted by the Second Assembly in 1921 were the outcome of these deliberations. Their effect was to weaken the rigid character of the obligations

¹ Compare the present writer's *The League of Nations and World Order, I.c.*, pp. 149 *et seq.*

² See the speeches of Ramsay MacDonald in the Fifth Assembly, 1924, *Records of the Plenary Meetings*, p. 42, and of Sir Samuel Hoare in the Fifteenth Assembly, 1935, *ibid.*, p. 44.

³ Compare the Memorandum prepared by the Secretary-General of the League, *Official Journal*, 1920, Vol. I, p. 309, and the resolution adapted by the League Council at its meeting at San Sebastian, 1920, *Official Journal*, 1920, Vol. II, p. 332.

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undertaken by the League members, especially by introducing the principle of gradual application of the sanctions laid down in paragraph 1, and by reserving the decision as to whether a breach of the Covenant had been committed to each member of the League.

Although it is difficult to reduce political developments which usually have complex causes to a common factor, it can be asserted in this case that the non-universal character of the League has been at least partly responsible for altering the Covenant, if not in law, at least in fact, by the unanimous adoption of these resolutions.¹ The general inclination to restrict the application of sanctions because of the non-universal character of the League can also be observed in the attitude of the League members with regard to disputes in which sanctions should have been put into effect in accordance with the Covenant, but were either not at all or only partially applied.² This was particularly evident in the Sino-Japanese dispute over Manchukuo, although, in view of Mr. Stimson's revelations, it is probable that, had the League taken energetic action, the U.S.A. would have been prepared to go at least as far as any of the States which were solemnly pledged to the application of Article 16 of the Covenant. But probabilities are a poor consolation to a country such as Great Britain, whose Navy would have had to bear the chief burden of war-like consequences, while the U.S.S.R. remained passive and the U.S.A. could not be relied upon to take part in far-reaching experiments in order to enforce the Kellogg Pact and the Washington Treaties.³

The Italo-Abyssinian War, on the other hand, shows that non-universality does not always provide the key to the failure of collective action.⁴ The States round the Mediterranean were at that time all either members of the League or protectorates, mandates or colonies of member States. Again, the territories from which the aggressor launched his attack, as well as Abyssinia itself, were surrounded by colonies of League members whose potential resources were thus closer at hand than they had been in the conflicts taking place in remote districts in the Far East or in South America. A further important difference arose from the neutrality legislation of

¹ Paul Guggenheim, *Der Völkerbund*, Leipzig, 1932; letter of Sir John Fischer Williams to the Editor of *The Times*, October 21st, 1935.

² See the present writer's *The League of Nations and World Order, l.c.*, pp. 153 *et seq.*

³ Philip C. Jessup, *The United States and the Stabilization of Peace*, New York, 1935.

⁴ See for details the present writer's articles on the Italo-Abyssinian Dispute and War in *The New Commonwealth Quarterly*, 1935-6 (Vols. I and II).

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the U.S.A. enacted in 1935 and 1936. As a result of the limitations which the U.S.A. then imposed upon herself, two of the sanctions applied against Italy – the arms embargo and the financial measures – were, in effect, supported by this important non-member State. There is reason to believe that the U.S.A. would have admitted the legality of a blockade established by League members against ships supplying oil to Italy, and, had the oil sanction been applied, that unofficial pressure at least would have been brought to bear upon the American oil companies to refrain from business with Italy. We know to-day that the effect of economic sanctions was reduced to vanishing point as much by the general attitude of League powers towards this experiment as by the policy of Laval, who regarded Mussolini as the guardian of the Brenner Pass and who was prepared to pay a heavy price to ensure Italy's abstention from manning their common frontier at war strength. It was repeatedly declared by prominent Statesmen in the sanctionist countries that in no circumstances should this policy be allowed to lead to war. Hence Mussolini had only to declare that a certain sanction was incompatible with the further maintenance of pacific relations between Italy and the sanctionist powers for the members of the League to be frightened into refusing to apply this form of pressure. Thus the unwillingness and inability of the sanctionist States to apply the Covenant as it stands enabled the transgressor himself to decide on the extent of the measures to be applied against him.

This state of affairs was as much the result of the unwillingness and inability of League members to fulfil their obligations under the Covenant as of the non-universality of the League. Consequently there was a noticeable tendency to return to the policy of alliances between States attracted to each other by the menace of a common adversary (Little Entente *versus* Hungary), to embark once more on the balance system (Locarno agreements between France and Germany under the guarantee of Great Britain and Italy), and to cover up this return to power politics by an ideology borrowed from Article 21 of the Covenant, i.e. 'regional understandings for securing the maintenance of peace'.¹

The failure of the League members, owing to the lack of relative universality, to establish a comprehensive system of collective security was bound – simply because of the interdependence of collective security and disarmament – decisively to affect the obligation of

¹ Compare, below, Chap. 23.

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League members under Article 8 of the Covenant to promote peace by 'the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations'. Thus League members approached the question of disarmament in a spirit of competition rather than of co-operative international policy. As disarmament is 'a function or aspect of the general international situation',¹ it would perhaps be sufficient from the point of view of this analysis to state the reasons for the failure to achieve general disarmament, as envisaged by Article 8 of the Covenant and Resolution XIV of the Second Assembly. It is, however, interesting to work out two effects of the non-universality of the League upon efforts for disarmament.²

As the League was not able to realize the ambitious aim of general disarmament without achieving relative universality, members endeavoured to come to more limited understandings with non-members, either on the initiative of non-members or on their own, whenever suitable occasions arose, and without necessarily using the machinery of the League. These tendencies came out with especial clearness in the endeavours of the principal sea powers to arrive at a direct understanding regarding the limitation of naval armaments. Neither the Washington Conference of 1921-2, in the convening of which the U.S.A. took the initiative, nor the later Conferences of Geneva, 1927, and London, 1930, 1935-6 and 1938, were held under the auspices of the League. In the same way, the limitation of Germany's naval re-armament was achieved by a direct convention between Great Britain and Germany. A similar endeavour, but without result, was made by the U.S.S.R. in 1922 regarding land disarmament. The Governments of the Baltic States were invited by the Soviet Union to a conference in Moscow, which was held in December, 1922, but which failed because the U.S.S.R. refused to give guarantees with regard to political propaganda. The positive character of the Washington Conference of 1921-2 could not be denied by the members of the League, and the Third Assembly of 1922 recommended the summoning of an international conference 'with a view to considering the extension to all non-signatory States of the principles of the Washington Treaty for the Limitation of Armaments'.³ Nevertheless, Lord Balfour felt it necessary to explain why

¹ Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, p. 332.

² See for details the present writer's *The League of Nations and World Order, I.c.*, pp. 169 *et seq.*

³ *Records of the Third Assembly, 1922, Plenary Meetings*, p. 290, and of the Fourth Assembly, 1923, Third Committee, p. 177.

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'the League was not consulted either as to its constitution or as to its programme'.¹

The feeling of uneasiness in regard to the exclusion of the League found its expression in the Fifth Assembly, when the question of a general disarmament conference was discussed. M. Herriot even went so far as to denounce an international conference on disarmament without the League as a conference against the League,² and Lord Parmoor, the representative of the British Empire, also termed such an eventuality as 'unfortunate'.³ In accordance with this attitude, a resolution was unanimously adopted by the Fifth Assembly declaring another technical conference on naval disarmament as unnecessary; the question of naval disarmament was to be discussed 'as part of the general question of disarmament' by the International Conference on Disarmament to be convened by the League of Nations. Although France and Italy could not prevent the other sea powers from convening another Naval Conference in 1927 outside the framework of the League, one of the reasons for their refusal to participate was the detrimental repercussions of a conference limited to five powers upon the prospects of the General Disarmament Conference and upon the authority of the League. This example shows again that the multiplication of various agencies aiming at the same or similar ends which results from the non-universal character of the League may easily weaken the efforts of each of them.

The remarkable feature of the activities of the League in the sphere of disarmament was that, although prepared from the beginning to accept, and increasingly successful in obtaining, the co-operation of non-members, it could not make any headway towards the realization of general disarmament. The situation became so paradoxical that even non-member States, such as the U.S.S.R. and the U.S.A., made proposals far more radical than any representative of a member State dared to suggest. Nevertheless, a positive result could not be obtained. What is the explanation? No doubt the increasing inclination, even among member States, to resort to war in defiance of their obligations under the Covenant and the Kellogg Pact played an important role. But even apart from this consideration there remains another reason which alone would have been sufficient to prevent States not satisfied with the existing degree of security from agreeing to disarmament proposals such as were sponsored by the U.S.S.R.

¹ *Records of the Third Assembly, 1922, Plenary Meetings*, p. 65.

² *Records of the Fifth Assembly, 1924, Plenary Meetings*, p. 53.

³ *ibid.*, p. 57.

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and the U.S.A. The reason was that at that time those non-members were prepared to co-operate only in disarmament but not in the complementary side of the problem which must be solved at the same time. Disarmament was possible, according to the view of States such as France or the Little Entente powers, only if accompanied by corresponding guarantees of collective security. The non-members, however, which were able to assist the League in achieving relative universality in the sphere of collective security and disarmament by extending their active co-operation to the constructive side of the problem, were not prepared to undertake such burdens. Since the U.S.S.R. and the U.S.A., when making their radical proposals for disarmament were not prepared to co-operate correspondingly in the field of collective security, their partial co-operation did not count for much in the eyes of the States which were obsessed by the need for increased security.

This survey of the activities of the League for the maintenance of world peace shows that the League members attempted to achieve relative universality in this sphere by inviting the 'key' non-member States either to become members of the collective system or to co-operate in its concrete endeavours for the pacific settlement of international disputes, the establishment of collective security and the promotion of disarmament. Such a policy gave to important non-member States the possibility not only – as was a matter of course – of deciding on their own policy in regard to co-operation, but also of influencing the course to be taken by the League, in so far as the achievement of its aims depended on the co-operation or non-co-operation of the non-member States. This state of affairs deprived the League of the possibility of being the sole guardian of world peace in all matters which the collective system could not handle without taking into account the existence and probable attitude of non-member States. Since it was difficult to allow for the policy of non-member key States, League members applied the system of collective security as provided by the Covenant only in so far as circumstances permitted. This imperfect working of the system of collective security reduced the prospects for general disarmament, and the prevailing insecurity caused by the renewed armament race shook the foundations of the League's system of peace, not only with regard to non-members, but also with regard to the relations between the members themselves.

The distinction between formal and material universality became

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apparent as soon as the obstructive attitude of Japan and Italy after their acts of aggression failed to set in motion the machinery for which Article 16, paragraph 4, makes provision – the expulsion of the pact-breaker from the League. To allow these two countries to remain within the League was to sanction the presence of a Trojan horse in the Assembly, Council and, last but not least, in the Secretariat itself. After the establishment of the League Reform Committee, the desire to retain, or regain, members at any price became even more obvious. One of the delightfully sarcastic memoranda by Lord Cranborne surveyed this propensity with mock seriousness: 'It is for consideration, therefore, whether any definition of universal membership which confines itself to the simple fact of membership by all, or by all important, States is adequate; and whether membership for the Committee's purposes should not be understood as meaning effective membership. On this view, the problem of the participation of all States in the League is at least in part the problem of securing, not merely their actual membership, but their constant and effective co-operation when they are members. It is certain that the framers of the Covenant assumed a will to collaborate, without which no League, however perfect its framework, can function. This, too, shows the close relationship existing between the subject of the present report and the other questions which face the Committee.'¹ It is hardly astonishing that a League which has been willing to sacrifice its basic principles for the sake of membership at any price should end by achieving the direct opposite of even formal universality.

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CHAPTER 15

THE PACIFIC SETTLEMENT OF INTERNATIONAL CONFLICTS

THOUGH war is the ultimate resort of power politics and fulfils functions which have to be fulfilled in any society,¹ whether by an 'appeal to arms'² or by more rational methods, the opinion has been voiced again and again since the early days of human history that an alternative to the arbitrament of blind force exists. In Thucydides, we find a passage from a speech of King Archidamos of Sparta which again confirms that there is nothing new under the sun: 'The Athenians themselves offer arbitration; and in justice one cannot without more ado persecute those as aggressors who submit themselves to justice.'³ Also Grotius reports a case in which Pompey, at the request of the Parthians and Armenians, appointed arbitrators to fix their boundaries.⁴ The Middle Ages, too, offer numerous examples of arbitration, and it has been suggested that the large number of small States, balancing each other, furnished 'a *terrain* as congenial for private wars and for litigation as for any disposition to avoid disputes'.⁵

In these systems of power politics of past centuries, as well as in the pre-1914 international society, arbitration formed the exception. The normal forms of pacific settlement of controversies were those of routine diplomacy and of conferences between the Greater powers. Yet in the course of the nineteenth century, an increasing number of arbitration treaties were concluded. While from 1794 to 1820 only sixteen arbitration treaties were concluded, their number amounted between 1841 and 1860 to 25, between 1861 and 1880 to 54, and between 1881 and 1900 to 111. During the same period, Great Britain had recourse to arbitration in 98 cases, the U.S.A.

¹ See, above, Chap. 9.

² See above in Chap. 13, note 6, p. 189.

³ *History of the Peloponnesian War*, Book I, Chap. 85.

⁴ *De Jure Belli ac Pacis*, Book II, Chap. 23. See also J. H. Ralston, *International Arbitration from Athens to Locarno*, Stanford University, California, 1929.

⁵ C. van Vollenhoven, *The Law of Peace*, London, 1936, p. 19.

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in 76, France in 38, Chile in 27, Peru in 17, Germany in 16, Italy in 13, Russia in 7 and Austria-Hungary in 6 cases.¹ All the 212 awards made during the nineteenth century were carried out in good faith by the powers concerned, and The Hague Conferences of 1899 and 1907 brought further progress. The States which took part in the work of The Hague concluded a detailed agreement, providing for the pacific settlement of international disputes, being 'animated by the sincere desire to work for the maintenance of general peace', 'resolved to promote by all the efforts in their power the friendly settlement of international disputes' and 'desirous of extending the empire of law and of strengthening the appreciation of international justice'.²

The means by which this end was to be achieved were good offices or mediation by a friendly power (an expedient which existed already under customary international law), international commissions of inquiry concerning 'points of fact',³ and a Permanent Court of Arbitration. In fact the latter was neither permanent nor a court, but only a panel of judges at the disposal of parties who wished to settle a dispute in accordance with this Hague Convention. How can the paradox be explained that wars occurred in spite of all these laudable efforts and finally all hopes in the gradual transformation of the pre-1914 inter-State system into a peaceful community were shattered by the outbreak of the first World War?

It is true, a number of comprehensive arbitration treaties had been concluded. Chile and Argentine signed such a treaty in 1902, Italy and the Argentine in the same year, Denmark and the Netherlands in 1904, Denmark and Italy in 1905, Italy and Mexico in 1907, Denmark and Portugal in 1909 and, finally, Italy and the Netherlands in the same year. Yet these countries were either safely separated from each other by oceans, as in the case of Italy and Mexico, or it was certain, according to human foresight, that countries like Denmark and Portugal would not resort to war against each other in any case. It is, therefore, not astonishing that the first arbitration treaty between two European Greater powers, that between Great Britain and France, which was concluded on October 14th, 1903, was only achieved at a time when both sides were aligned on the same scale of the balance of power. The *Fashoda* incident had been

¹ Alfred H. Fried, *Handbuch der Friedensbewegung*, Berlin, 1911, p. 192.

² The Hague Convention for the Pacific Settlement of International Disputes, 1907, Preamble.

³ *ibid*, Article 9.

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amicably settled and it was not to be expected that the two countries would fight on different sides in any major war. But even then the agreement was limited to legal questions:

'Differences of a juridical order, particularly those relating to difficulties of interpretation of existing conventions, shall – provided they affect neither the vital interests nor the honour of the Contracting Powers and cannot be solved through diplomatic channels – be submitted to the Permanent Court of Arbitration in accordance with Article 16 of The Hague Convention.'¹

'Honour and vital interests'² are exactly those matters over which wars happen to occur. This reservation, therefore, can only mean that questions which may involve the application of the ultimate weapon of power diplomacy are excluded from arbitration.³

In the words of Sir James Headlam Morley, who acted as Historical Adviser to the Foreign Office, arbitration 'has generally been used in matters of minor or secondary importance and even where it has been most successful, investigation seems to show that first of all a definite decision has been made by the two States in controversy that it is for their common advantage that a peaceful settlement should be arrived at.'⁴

This rather realistic description of the importance of arbitration treaties in a system of power politics is echoed by a German diplomat who voices the same view on the function of such agreements, but with a touch of Machiavellian cynicism: 'In my humble opinion, an improvement in the relations between the two countries might well be initiated by the conclusion of a treaty of arbitration with England. In the form which is customary nowadays, such treaties are quite harmless and *de facto* of no importance. At the same time it is surprising to note the extent to which, in political matters, our practical Englishmen are dominated by phrases. If we were to agree to a treaty of arbitration, a very large number of people in England would believe that the Germans had put off their desire for conquest and had become peaceable individuals. In exchange, we could afford to build a few more battleships, especially if they were not given too much publicity.'⁵ If it is asked whether the first World War

¹ See, on the political background, *The Cambridge History of British Foreign Policy*, Cambridge, 1923, Vol. III, pp. 305 *et seq.*

² Article 9 of The Hague Convention referred to above in note 2, p. 217.

³ Compare, above, Chap. 10.

⁴ Sir James Headlam-Morley, *Studies in Diplomatic History*, London, 1930, pp. 35–6.

⁵ Letter from Count Bernstorff, then Counsellor of the German Embassy in London, to Prince Bulow (1904), quoted in H. Nicolson, *Diplomacy*, London, 1939, p. 141.

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could have been avoided with the machinery for the pacific settlement of international conflicts which was in 1914 at the disposal of the European powers, it is hard to give a clear-cut answer. It must depend on the circumscription of the issue. If the dispute only involved the question of the responsibility of Serbia for the irredentist propaganda against Austria-Hungary for the preparations made in connection with the Sarajevo murder and for the actual crime, it might have been conceivable to limit the dispute to the *terrain juridique*.¹ Assuming that Austria-Hungary refused to submit the conflict to the Hague Court, as she actually did, still the machinery of the European Concert might have stood the strain of the deeper political tension underlying such a legal case between the Dual Monarchy and Serbia. As, however, any concession on either side would have been identified with the humiliation of either Austria and Germany or Russia and France no adequate agency for the settlement of such a dispute existed. For what was actually at stake was the whole unstable equilibrium of the European balance of power, a system which had been subjected to so many crises in the years preceding 1914 that the question was no longer whether a major war could be avoided, but only when it was going to start.²

In the League Covenant, machinery for the pacific settlement of international disputes occupies a prominent position. Lord Cecil went as far as to state that 'it is for promoting peaceful international settlements that the League of Nations principally exists'.³ The drafters of the Covenant did not overlook the thorny problem of political disputes. While controversies recognized by the parties 'to be suitable for submission to arbitration'⁴ were to be decided by arbitration, a procedure of conciliation was provided for other disputes 'likely to lead to a rupture'.⁵ The Permanent Court of International Justice, mainly competent for legal disputes, but also entitled to deal with any other 'dispute of an international character which the parties thereto submit to it',⁶ is vastly superior to the Permanent Court of Arbitration created by The Hague agreements. It is a permanent court in the true sense of the word⁷ and it is 'composed of a body of independent judges, elected regardless of their

¹ See H. Lauterpacht, *The Function of Law in the International Community*, Oxford, 1933, p. 158.

² Compare G. Lowes Dickinson, *The International Anarchy, 1904-1914*, London, 1937.

³ In the Twenty-sixth Session of the Council, *Official Journal*, 1923, p. 1,298.

⁴ Article 13, paragraph I, of the Covenant.

⁵ Article 15, paragraph I.

⁶ Article 14.

⁷ Article 23 of the Statute of the Permanent Court of International Justice.

nationality from amongst persons of high moral character who possess the qualification required, in their respective countries, for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law'.¹ The jurisprudence built up by the Court, since it passed its first judgment in the Wimbledon case on August 17th, 1923, has proved that the Court has not only fulfilled without blemish² the functions entrusted to it,³ but has greatly contributed to the development of international law.⁴

Impressive though these activities have been, the test of the League machinery for the pacific settlement of international disputes lies in the sphere of political conflicts. In order to pass a fair judgment on the achievements and failures of the League system in this field, it is essential to keep in mind the limitations imposed upon this machinery by the text of the Covenant. According to Article 3, paragraph 3, and Article 4, paragraph 4, the Assembly and Council are competent to deal at their meetings with any matter 'affecting the peace of the world'. Even if the controversial question whether these articles grant to the Assembly and Council a general competence in addition to those functions which they fulfil under Articles 11 to 17, is answered in the affirmative,⁵ any action taken by these bodies requires unanimity, in so far as the Covenant does not provide expressly to the contrary.⁶ One of the most important exceptions to this unanimity rule is laid down in Article 5, paragraph 2: All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, may be decided by a majority of the members of the League represented at the meeting.

Under Article 11, any war or threat of war is declared a matter of

¹ Article 2 of the Statute of the Permanent Court of International Justice.

² See, on the criticism raised against the Court in connection with the Austro-German Customs Union case, E. Borchard, 'The Customs Union Advisory Opinion', in *The American Journal of International Law*, 1931 (Vol. 25), pp. 711 *et seq.*, and Philip Jessup, *ibid.*, 1932 (Vol. 26), pp. 105 *et seq.*

³ Compare, for excellent surveys of the organization and work of the Permanent Court of International Justice, Manley O. Hudson, *The Permanent Court of International Justice*, New York, 1934, and A. P. Faschiri, *The Permanent Court of International Justice*, Oxford, 1932.

⁴ The most original and comprehensive analysis of the Court's jurisprudence is that of Karl Schmid, *Die Rechtsprechung des Ständigen Internationalen Gerichtshofs*, Stuttgart, 1932. See also H. Lauterpacht, *The Development of International Law by the Permanent Court of International Justice*, London, 1934.

⁵ See H. A. Smith, 'The Binding Force of League Resolutions', in *The British Yearbook of International Law*, London, 1935, pp. 158-9, and the present writer's *The League of Nations and World Order*, London, 1936, pp. 98 *et seq.*

⁶ Article 5, paragraph 1.

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concern for the whole League and the League is empowered to 'take any action that may be deemed wise and effectual to safeguard the peace of nations'.

The focal article is, however, Article 15 of the Covenant. Any dispute likely to lead to a rupture can be brought by any party to the dispute before the Council.¹ The report of the Council, even in the case of unanimity, is not a decision binding on the disputants. Its only formal consequence is that the other League members are precluded from resorting 'to war with any party to the dispute which complies with the recommendations of the report'.² Still less cheerful is the position of the party who is prepared to abide by a majority report. In this case, as the reservation of absolute and sovereign discretion is formulated in a phrasology congenial to a collective system, 'the members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice'.³

Furthermore, any matter 'which by international law is solely within the domestic jurisdiction' of one of the parties is outside the competence of the Council under Article 15, if this obstacle to the proceeding is raised by the party whose national sovereignty would otherwise be infringed.⁴ As the Permanent Court of International Justice laid down, in its Advisory Opinion on the Nationality Decrees issued in Tunis and Morocco, 'the question whether a certain matter is or is not solely within the jurisdiction of a State, is an essentially relative question; it depends upon the development of international relations'.⁵ This means that at present the Council has not even the authority to pass a report, of the platonic type as has been described, on burning questions such as access to and control of raw materials and markets, migration or tariffs, if the State which might be affected by such an investigation refuses to submit to such an *enquête*.

Again, the doctrine of national sovereignty fulfils its customary function of frustrating the rule of law at the crucial point.⁶ In the words of Brierly, 'law will never play a really effective part in international relations until it can annex to its own sphere some of the matters which at present lie within the "domestic jurisdiction" of the several States; for so long as it has to be admitted that one State may

¹ The Council may refer the dispute to the Assembly, Article 15, paragraph 9.

² Article 15, paragraph 6.

⁴ *ibid.*, paragraph 8.

³ *ibid.*, paragraph 7.
⁵ Series B.4, p. 24, February 7th, 1923.

⁶ See George W. Keeton, *National Sovereignty and International Order*, London, 1939, above, Chap. 4 and, below, Chap. 21.

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have its reasonable interests injuriously affected by the unreasonable action of another, and yet have no legal basis for complaint, it is inevitable that the injured State, if it is strong enough, will seek by other means the redress that the law cannot afford it'.¹

Taking into account the obvious limitations of the collective system resulting from its non-universality,² and the self-limitations which we have discussed, what conclusions can be derived from the practice of the League of Nations in the course of nearly two decades?

In order to do justice to the work of the League, it is only fair to give due prominence to some of the successful ventures of Geneva in the sphere of political conflicts.

In the case of the Aaland Islands,³ the dispute was brought before the Council on the initiative of Great Britain under Article 11 of the Covenant at a time when only one of the disputants, Sweden, was a member of the League, whilst Finland was not at that stage yet admitted to membership. The predominantly Swedish population of these islands wished to be united with Sweden in accordance with the principle of national self-determination, and Sweden was equally interested in the maintenance of the Paris Convention of 1856 providing for the non-fortification and neutralization of the Aaland Islands. The Council resolution, which was adopted unanimously, including the votes of Finland and Sweden, skated over thin ice on the question of the domestic jurisdiction of Finland over these islands as forming part of her territory,⁴ but embodied a decision which can be described as equitable. Finland's claim of sovereignty over the islands was recognized. It was, however, limited by granting far-reaching autonomy to the inhabitants of the Aaland Islands, and the principles of the Convention of 1856 were re-affirmed. A comparison between this settlement and the Convention of 1856 shows a common anti-Russian touch which becomes evident from a rather outspoken passage in the report of the Committee of Inquiry: 'Finland has victoriously checked the Bolshevik assault and it has thus avoided an expansion of the revolutionary Russian movement in Europe and, in particular, in Scandinavia. It would be hard to wish to thank her by depriving her of territory which she thinks essential. Whatever may be the future of Russia, there is interest in hastening the consolidation

¹ J. L. Brierly, *The Law of Nations*, Oxford, 1936, pp. 62-63.

² See, above, Chap. 14.

³ The League of Nations, *Official Journal*, 1920, pp. 246 *et seq.*

⁴ T. P. Conwell-Evans, *The League Council in Action*, London, 1929, pp. 150 *et seq.*

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of Finland which has been constituted on the debris of the Russian Empire.¹

Another dispute which can be booked on the credit side of the League is its decision in the Mosul case between Great Britain and Turkey. This conflict, and the way in which it was solved, is of particular interest. It involved an area of the utmost importance both from a strategical and economic standpoint, in view of the extensive oil resources in the *vilayet* of Mosul. The conflict had arisen between a Greater and smaller power, and the British Foreign Secretary expressed the feelings of his country when he pointed out in the League Assembly:² 'A more practical and a more significant proof of our admiration for the Assembly, of our confidence in the Council and in its justice is our ready acceptance of the Council as arbitrator and judge in the unfortunate difference of opinion which has arisen between us and the Turkish Republic and which we have been unable to settle amicably without your help. No greater proof of the influence which the League has gained, or of the confidence with which the government of a great nation may justly submit its cause to the decision of the Council, can be offered than by the action which my Government has taken in connection with the difference concerning Mosul'. Furthermore, the way the commissioners appointed by the League Council, a Belgian, Hungarian and Swede, maintained their own and the League's rights and dignity against difficulties arising locally in the course of their investigations is a striking tribute to the high sense of international responsibility, frequently noticeable in the history of the League, amongst representatives of the smaller European League members. At the same time, the report of the commission, in which the issue at stake is analysed from historic, ethnic, economic and strategic points of view, proves the feasibility of detached third party opinions on political disputes, sometimes so conveniently classified as non-justiciable. Finally, this quarrel provided the opportunity for the Advisory Opinion of the Permanent Court in which, following the precedent of Article 15, paragraphs 6 and 7, the Court applied 'the well-known rule that no one can be judge in his own suit' and avoided by an ingenious, if technical, device the suicidal interpretation according to which the unanimity principle

¹ Report of the Commission of Rapporteurs on the Aaland Islands, April 16th, 1921, Council Document B.7, 21/68/106. See also K. W. Davis, *The Soviets at Geneva*, Geneva, 1934, pp. 89-90, and Conwell-Evans, *l.c.*, p. 154.

² Austen Chamberlain in the Sixth League Assembly, 1925, Plenary Meetings, *Official Journal*, Special Supplement No. 33, p. 37.

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includes the disputants: 'The representatives of the Parties may take part in the voting. . . . It is only for the purpose of determining whether unanimous agreement has been reached that their votes are not counted.'¹

As Great Britain adopted a conciliatory attitude throughout the conflict and Turkey thought it wise not to resort to war, although this possibility could not be entirely ignored at certain stages of the dispute, an amicable settlement between the two powers was achieved. In order to see in the proper perspective the importance of a settlement of this kind, it is well to remember that in the pre-1914 period cases were frequently decided by the Permanent Court of Arbitration even between Greater powers as well as between Greater powers and smaller States, once the parties concerned had made up their minds not to resort to war against each other.

The test is provided by cases in which there is a very high probability that States would have resorted to war had the League machinery not existed, or actually did so, but were forced back to an arbitral settlement by the resolution displayed on the part of the other participants in the collective system. The history of the League contains a show case of even this type. After a quarrel between a Greek and Bulgarian sentry, Bulgaria was invaded by two Greek army corps. This incident offered Briand, the then President of the Council, a spectacular opportunity to demonstrate how well even the very imperfect League machinery can work, provided the Greater powers mean to apply it. His stern telegram addressed to both parties is worth being quoted in full: 'The Secretary-General, acting under Article 11, has convoked a special meeting of the Council on Monday next in Paris. The Council at that meeting will examine the whole question with representatives of the Bulgarian and Greek Governments. Meanwhile, I know my colleagues would wish me to remind the two Governments of the solemn obligations undertaken by them as members of the League of Nations, under Article 12 of the Covenant, not to resort to war, and of the grave consequences which the Covenant lays down for breaches thereof. I therefore exhort the two Governments to give immediate instructions that, pending the consideration of the dispute by the Council, not only no further military movements shall be undertaken, but the troops shall at once retire behind their respective frontiers.'² The Commission entrusted with

¹ Advisory Opinion of November 21st, 1925, Series B.12, p. 32.

² Paris, October 23rd, 1925. The League of Nations, *Official Journal*, 1925, pp. 1,696-7.

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the final settlement was composed of a British ambassador, a Swedish diplomat, a Dutch Member of Parliament and a French and an Italian general. Its task lay in the investigation of the facts connected with the occurrence of the incident. It had also to fix the responsibility for the quarrel, and to assess the damage due from the guilty party, and, finally, it was entrusted with the working out of proposals for the avoidance of future disturbances.¹ The fact that the commission fulfilled its triple function of investigation, judicial decision and constructive statesmanship to the complete satisfaction of everyone concerned proves that there is no inherent obstacle to a rational and reasonable settlement of inter-State disputes.

Again, however, it is advisable to keep in mind that wars between minor powers had been prevented before by Greater powers when their own interests did not seem to be involved, or when they did not wish a conflict to happen, or to spread, at a particular time or in a particular area.² Action on the part of the Greater powers of this kind was familiar in the pre-1914 period and under the term 'intervention', i.e. 'dictatorial interference of a third State in a difference between two States, for the purpose of settling the difference in the way demanded by the intervening State'.³

The practice of the League provides, however, many more cases which exemplify the negative aspects of its activities in this field. There is a whole series of disputes which might have been settled in accordance with the provisions of the Covenant during the first few years of the League's existence and which were either not submitted at all to the jurisdiction of the collective system or were dealt with in a rather peculiar fashion.

Outstanding amongst these missed opportunities is the conflict between Lithuania and Poland over the seizure by the latter of Vilna, the ancient capital of Lithuania.⁴ Conwell-Evans, who attempts to give as much credit to the League as it can possibly claim, sums up the impression derived from his study of the matter, in hard but not unjust words: 'The Council was lacking in authority, because the Council at that time did not represent the will of its Governments. Where this will has been clearly expressed, as in the case of the

¹ League of Nations, *Official Journal*, 1925, pp. 1,711-13.

² Compare accounts of the various crises which were settled by the European Concert during the period immediately preceding the War of 1914, such as the Bosnian or the Agadir Crisis, *The Cambridge History of British Foreign Policy, l.c.*, Vol. III, pp. 385 *et seq.*

³ See Oppenheim-Lauterpacht, *International Law*, London, 1935, Vol. II, pp. 130, 138.

⁴ The League of Nations, *Official Journal*, 1920, pp. 397 *et seq.*

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Græco-Bulgar, Yugoslav-Albanian and Mosul disputes, the disputants bent to it. In 1920 the Allied Powers were anxious to see Russia defeated by Poland; the will to peace was absent, and in appealing to the League under Article 11, Poland was not so much actuated by a desire to preserve the peace of nations, as to secure the neutrality of Lithuania while she fought Russia. The Covenant was being abused to keep the ring for Poland in her struggle with the Soviets.¹ Equally emphatic is Paul Mantoux, who, at that time, occupied the post of Director in the Political Section of the League Secretariat: 'The members of the Council or, rather, the Governments they represented, were not prepared to accept any risk, although by so doing they could from the outset have given the League of Nations the authority which it later lacked when faced with more serious problems.'² Whether it was bias in favour of Poland or unwillingness to take risks in an issue in which no direct interests of the powers represented on the Council were concerned, it can be argued in cases of this category, as it was in fact concerning the war between Greece and Turkey,³ that the League could not be expected to work properly in disputes of this kind. They were residues of the world war, and it was the task of the various Peace Conferences to tackle these thorny problems.

At a time when such mitigating circumstances could no longer be pleaded in favour of the Geneva system, Italy regarded it as compatible with her duties as a member of the League of Nations to bombard the Greek island of Corfu by way of reprisal, as she maintained, against the assassination of the Italian members of a commission, entrusted by the Ambassadors' Conference with the delimitation of the frontier of Albania.⁴ The Committee of jurists, charged by the Council with an inquiry into the compatibility of 'measures of coercion' with the Covenant, answered in the tradition of the Delphic oracle: 'Coercive measures which are not intended to constitute acts of war may or may not be consistent with the provisions of Articles 12 to 15 of the Covenant, and it is for the Council, when the dispute has been submitted to it, to decide immediately, having due regard to all the circumstances of the case and to the nature of the measures

¹ Conwell-Evans, *l.c.*, p. 100. See also the arguments put forward by M. Bourgeois in the *First League Assembly*, 1920, *Records of the Plenary Meetings*, pp. 267-8.

² The Graduate Institute of International Studies, *The World Crisis*, London, 1938, p. 35.

³ See the observations of Lord Balfour on this subject, *Records of the Third Assembly*, 1922, *Plenary Meetings*, p. 69.

⁴ See Conwell-Evans, *l.c.*, pp. 74 *et seq.*

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adopted, whether it should recommend the maintenance or the withdrawal of such measures'.¹ And it is easier to understand this rather complicated reply in the language of Count Grandi: 'At Corfu the Duce fired his gun, not to intimidate Greece, but to intimate to Europe that it was time to halt for a moment to consider Italy's international position.'²

This conflict, in which the Covenant was not applied in the face of open defiance on the part of a Greater power, forms a precedent the importance of which was not lost sight of by other empire-builders. Japanese diplomacy after the invasion of Manchukuo skilfully made use of all the loopholes in the Covenant, and it cannot be said that the other members of the League made any convincing attempt to prevent them from doing so. The aggression took place on September 18th, 1931. On December 10th, the Council appointed what became known later as the Lytton Commission, which was asked to 'study on the spot and report to the Council on any circumstance which, affecting international relations, threatens to disturb peace between China or Japan or the good understanding between them on which peace depends'.³ The Commission sailed on February 3rd, 1932, via the United States and Japan. Its report was published on October 1st, 1932, considered by the Council on November 21st, 1932, and adopted in a modified form by the Assembly in February, 1933. Lord Lytton's reflections on this time table are rather pungent: 'The long delay in coming to agreement about the facts, first in the Council and subsequently in the Assembly, naturally led the Japanese to believe that a face-saving formula would eventually be adopted. If that was not intended, why the delay, because there was never any question of the League not accepting the findings of its Commission?'⁴

The successes and failures of the League in this field reveal some of the conditions on which the satisfactory settlement of political disputes by pacific means must depend.

There is no objective criterion according to which legal and political, justiciable and non-justiciable disputes can be distinguished.⁵

¹ The League of Nations, *Official Journal*, 1924, pp. 523 *et seq.* See also Oppenheim-Lauterpacht, *International Law*, London, 1935, Vol. II, pp. 131 *et seq.*

² Hamilton Fish Armstrong (Editor), *The Foreign Policy of the Powers*, New York, 1935, p. 83.

³ League Doc. C.663, M.320, 1932, VII, pp. 6-8.

⁴ Lord Lytton, 'Lessons of the League of Nations Commission of Inquiry in Manchuria', in *The New Commonwealth Quarterly*, 1937 (Vol. III), p. 223. See also Russell M. Cooper, *American Consultation in World Affairs*, New York, 1934, pp. 192 *et seq.*

⁵ W. Schucking, *Die Organisation der Welt*, Leipzig, 1909, p. 602; Sir John Fischer Williams, *International Change and International Peace*, Oxford, 1932, p. 13; H. Lauterpacht, *The Function of Law in the International Community*, Oxford, 1933, pp. 153 *et seq.*

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Whether 'the parties are in conflict as to their respective rights'¹ or the matter is 'mainly political and for this reason does not allow of a decision based exclusively on legal principles',² the attitude of the disputants is decisive whether they prefer a judicial settlement in accordance with the *lex lata*, or recommendations 'which are deemed just and proper'³ or war as 'the court of appeal between nations'.⁴

This element of uncertainty and political discretion is increased by the fact that, under the League Covenant, political disputes are submitted to an organ composed of government representatives. This solution has been praised as a concession to realism, but is not free from dangers which have become evident in the practice of the League. In the course of the Council discussion of the dispute between Hungary and Yugoslavia, following the assassination of King Alexander of Yugoslavia at Marseilles, M. Laval began his speech with the words: 'In this serious debate, France stands by the side of Yugoslavia.'⁵ The Special Correspondent of *The Times* commented on this session of the Council in the most outspoken manner: 'The most evident fault of the League Council during these few days was its inability to act in a truly judicial capacity – a fault which was made painfully plain by the readiness of nearly all the delegates to take sides in the dispute under discussion.'⁶

In addition, there are all those loopholes to which League members can have resort by pleading the incompetence of the League organs on the ground of the reservation of 'domestic jurisdiction'⁷ and by the absurdities of the unanimity principle, as applied in League practice. The Advisory Opinion of the Permanent Court of International Justice in the Mosul case has proved how common sense and goodwill can overcome real obstacles as well as the mock arguments of international Covenant-breakers.⁸ This precedent was not followed by the League in the 1931–3 conflict between China and Japan, when

¹ Arbitration Treaty between Germany and Poland, Locarno, October 16th, 1935, Article 1.

² German-Swiss Arbitration and Conciliation Treaty, December 3rd, 1921, Article 4. See M. Habicht, *Post-War Treaties for the Pacific Settlement of International Disputes*, Cambridge (Mass.), 1931, and Karl Strupp, *Die Schiedsgerichts-, Gerichts- und Vergleichsverträge des Deutschen Reiches*, Berlin, 1929.

³ Article 15, paragraph 4, of the Covenant.

⁴ B. Mussolini in a speech reported in *The Times*, August 18th, 1934.

⁵ The League of Nations, *Official Journal*, 1934, p. 1,761. See also the present writer's 'International Justice', in *The New Commonwealth Quarterly*, 1935, Vol. I, pp. 59 *et seq.*

⁶ *The Times*, December 12th, 1934. See also Viscount Cecil, *The Way of Peace*, London, 1928, p. 117, and J. L. Brierly, *The Law of Nations*, Oxford, 1928, p. 137.

⁷ See, above, text to note 4, p. 221.

⁸ See, above, text to note 1, p. 224.

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the impossibility of action in accordance with the Covenant,¹ or unwillingness to take it, was covered up by the absurd argument that action under Article 11 of the Covenant required the consent of the power guilty of a violation of the Covenant. Yet the essential point is that the League *could* have taken this line 'had it desired the Covenant to be effective'.²

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¹ See, above, Chap. 14 and, below, Chap. 23.

² H. Lauterpacht, *The Development of International Law by the Permanent Court of International Justice*, London, 1934, p. 50.

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CHAPTER 16

PEACEFUL CHANGE

THE distinction between legal and political disputes minimizes an important problem which has so far not yet received a satisfactory solution in international society, the question of peaceful change. Life in our time has become more and more dynamic and 'if changes are not to be made by the traditional method of war, they must be effected in some other way, for it is useless to suppose that the world can at any time in its history be encased for ever in an unchangeable mould'.¹ It would be untrue to think that peaceful change and power politics are incompatible. The history of the pre-1914 period shows that minor and major changes have been achieved by agreement between the powers directly concerned. The classic case has been provided by the agreed secession of Norway from Sweden in 1905.² In other cases, the risk of war has been deliberately weighed, but the parties to the dispute have preferred a peaceful solution. Thus the agreement between France and Prussia in 1867 was achieved because neither State was yet ready to engage in war.³ The motives which influence Statesmen may even be due to considerations not typical for a society such as the modern inter-State system, for it would be hard to explain Great Britain's cession of the Ionian Islands to Greece on any such narrow grounds. Naturally, any concession of this kind can be attributed to a far-sighted interpretation of national interests, as this action was likely to 'add to the goodwill towards Great Britain'.⁴ It is, however, more congenial to power politics to take a more limited view of self-interest, as any liberality which can be interpreted as weakness is bound to reflect on a country's prestige. Thus, as a rule, a State cannot hope to achieve far-reaching changes, for instance of the territorial *status quo*, by agreement: either it must reconcile itself to

¹ *The Times*, May 30th, 1938.

² See C. R. M. F. Crutwell, *A History of Peaceful Change in the Modern World*, London, 1937, pp. 91 *et seq.*

³ *The Cambridge History of British Foreign Policy*, Cambridge, 1923, Vol. III, pp. 11 *et seq.*

⁴ *ibid.*, Vol. II, p. 617.

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an attitude of resignation or be prepared to achieve the change by unilateral action. If the other States do not consider the *de facto* alternative important enough to prevent it by force the change is achieved by a *fait accompli*. This is the form of peaceful, if unilateral, change which is most akin to a system of power politics. Both the Russian denunciation of the Black Sea clauses in 1870¹ and the Austrian incorporation of Bosnia-Herzegovina² belong to this category. Thus the problem in a society of this kind is not a question of adjustments on a basis of justice and equity, but of the satisfaction of the claims of the various nations that are in a position to disturb the peace.³

In some of these cases it has been maintained that the change demanded could be based on legal principles. It, therefore, seems apposite at this stage to inquire to what extent classic international law provides remedies in accordance with which an alteration of a certain *status quo* can be achieved. The right of self-preservation and necessity has been pleaded by writers on international law and State practice. In Gentili's words, 'a just and unavoidable necessity makes anything lawful',⁴ and as Lord Ashburton, the British Ambassador, wrote to the U.S.A. Secretary of State 'there are possible cases in the relations of nations as of individuals, where necessity which controls all other laws, may be pleaded'.⁵

The conception complementary to the notion of necessity in the domain of international treaties is the principle: *conventio omnis intellegitur rebus sic stantibus*. While commonly this doctrine is associated with Machiavelli,⁶ it is not so well known that Queen Elizabeth of England based her refusal to abide by an agreement with the United Estates of the Netherlands on this principle. As Zouche records, 'she took the view, on the opinions of jurists and statesmen, that every convention, although sworn, must be understood to hold only while things remain in the same state; that a man is more strongly bound to his country than to a private promise; and that princes are not bound

¹ *The Cambridge History of British Foreign Policy*, Cambridge, 1923, Vol. III, pp. 43 *et seq.*

² *ibid.*, pp. 144 *et seq.*

³ See C. A. W. Manning, *Peaceful Change*, London, 1937, pp. 180-1.

⁴ *De Jure Belli Libri Tres*, Bk. III, Chap. XII, Oxford, 1933, Vol. II, p. 351.

⁵ John Bassett Moore, *History and Digest of the International Arbitration to which the United States has become a Party*, Washington, 1898, Vol. II, p. 217. See for a critical examination of this doctrine, Paul Weiden, 'Necessity in International Law', in *Transactions of the Grotius Society*, London, 1939, pp. 105 *et seq.*

⁶ Nicolò Machiavelli, *The Prince*, London, 1935, Chap. 18, p. 78.

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by their contract when the contract results in public injury'.¹ Yet this doctrine cannot be applied in those cases which are the most objectionable from the standpoint of justice and equity, i.e. treaties imposed by overwhelming force; for in an agreement of this class, the intention of the party forced to conclude it is irrelevant.² Even in treaties of a more normal type, the function of the *clausula* is to give effect to the true intention of the parties and to modify the agreement in accordance with their supposed will, if they could have foreseen subsequent changes at the time when the agreement was concluded. But it is definitely not the function of this remedy to change obligations contrary to the intention of the parties.³

Similarly limited is the scope of the doctrines of estoppel and of abuse of rights. In the case concerning the Factory at Chorzów, the Permanent Court of International Justice defined the principle of estoppel, as follows: 'It is, moreover, a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one party cannot avail himself of the fact that the other has not fulfilled some obligation or has not had recourse to some means of redress, if the former party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open to him.'⁴ Equally the question whether a party has abused a right, 'an abuse which, however, cannot be presumed by the Court',⁵ is essentially a matter of judicial discretion. This makes it obvious that all these remedies of international law, even within the restricted field in which they can be applied, are bound to degenerate into political ideologies in the absence of an impartial organ entrusted with their application to concrete cases in which parties allege to be entitled to those benefits.⁶

During the period when international law was based on natural

¹ Richard Zouche, *An Examination of Feacial Law and Procedure, or of Law between Nations, and Questions concerning the Same*, Washington, 1911, Vol. II, p. 102.

² H. Lauterpacht, *The Function of Law in the International Community*, Oxford, 1933, p. 272, and *The Development of International Law by the Permanent Court of International Justice*, London, 1934, p. 43.

³ Sir John Fischer Williams, *International Change and International Peace*, Oxford, 1932, pp. 37-8.

⁴ Judgment of July 26th, 1927, Series A.9, p. 31; see also Series B.15, p. 27, and H. Lauterpacht, *Private Law Sources and Analogies of International Law*, London, 1927, pp. 203 *et seq.*

⁵ Order of the Permanent Court of International Justice in the case of the Free Zones of Upper Savoy and the District of Gex, December 6th, 1930, Series A.24, p. 12. See also Series A.7, pp. 30 *et seq.*

⁶ L. Oppenheim, *The League of Nations and its Problems*, London, 1919, pp. 69 *et seq.*

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law, it was possible to rely on its subconscious growth. It could be assumed, as it was done by Earl Russell, that 'international law makes progress in keeping with the advance of Christian civilization, and if it be found that a practice not hitherto treated as a violation of its principles be, nevertheless, a crime of the darkest character and an offence against our common humanity, it would surely become the great Christian States to include by their united verdict this atrocious crime in the list of those which it is the duty of international law to prevent and to punish'.¹ Once States insisted on making the development of international law dependent on their consent, this agency of a law growing by its own volition was lost to them. State practice realized this necessity to a limited extent by a conscious reception of the principles of natural law into international treaty law. Only a few examples of these clauses can be quoted here. Article VII of the Jay Treaty between the United States of America and Great Britain of 1794 requires the arbitrators to give their judgment in accordance with the principles of 'justice, equity and the law of nations'. A similar combination of law and equity is to be found in the treaties between the U.S.A. and Costa Rica (1860), between the U.S.A. and Ecuador (1862) and between the U.S.A. and Venezuela (1866). Under the treaty concluded in 1910 between Great Britain and the U.S.A. regarding the establishment of a British-American Claims Arbitral Tribunal, the judges are bound to make their decisions 'in accordance with treaty rights, and with the principles of international law and equity'.²

This process of supplementing international law by the introduction of natural into positive law as an auxiliary source of law continued in the post-1919 period. In the case of the Norwegian claims against the United States, the Permanent Court of Arbitration defined law and equity, as understood in the agreement between Norway and the United States, as 'general principles of justice as distinguished from any particular system of jurisprudence or the municipal law of any State' and pointed out that these terms 'cannot be understood here in the traditional sense in which these words are used in Anglo-Saxon jurisprudence'.³ In numerous bilateral agreements

¹ Dispatch to Earl Cowie (Paris), February 28th, 1865 (*Fontes Juris Gentium*, Series B, Section I, Tomus I, Part I, Berlin, 1932, No. 388).

² See Alfred von Verdross, *Die Einheit des völkerrechtlichen Weltbildes auf der Grundlage der Völkerrechtsverfassung*, Vienna, 1923, William R. Manning, *Arbitration Treaties among the American Nations*, New York, 1924, and Lauterpacht, *l.c.*, 1927, pp. 60 *et seq.*

³ Decision XVIII, p. 141.

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clauses were incorporated, as in the arbitration treaty between the U.S.A. and France of February 6th, 1928. Under this treaty, the parties bind themselves to submit all matters to arbitration 'which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law and equity'.¹ Of still greater importance was the insertion into the Statute of the Permanent Court of International Justice of the clause that, in the absence of international convention and custom, the Court has to apply 'the general principles of law recognized by civilized nations'.² The Court in its whole practice has never expressly based a decision on this source of law. This does not, however, impair the importance of this clause,³ for its very existence prevented the delivery of judgments in which the incompleteness and the rudimentary character of this legal system might have been formally covered up by the dismissal of a claim on the ground of an apparent lack of rules providing for such an eventuality. In any real emergency, the Court, in the many instances of its activities of judicial legislation,⁴ could have had recourse to those principles amongst which justice and equity rank foremost. The potentialities of this subsidiary source of international law become evident from the courageous Dissenting Judgment of Judge Manley O. Hudson in the *Diversion of Water from the Meuse* case between Belgium and the Netherlands. The learned judge referred to the general principles of law recognized by civilized nations and affirmed that 'in more than one nation principles of equity have an established place in the legal system', and expressed the opinion that 'what are widely known as principles of equity have long been considered to constitute a part of international law, and as such they have often been applied by international tribunals'.⁵ In addition, Article 38 of the Statute empowers the Permanent Court of International Justice to decide a case *ex aequo et bono*, i.e. even contrary to existing international law, if the parties agree to such a procedure.⁶

Thus there does not seem to exist any difficulty in the way of

¹ Compare for a comprehensive survey of these clauses M. Habicht, *The Power of the International Judge to give a Decision 'ex aequo et bono'*, London, 1935, and L. W. McKernan, 'Special Mexican Claims', in *The American Journal of International Law*, 1938 (Vol. 32), p. 466.

² Article 38, No. 3.

³ See for a survey of the literature which has grown around this question Oppenheim-Lauterpacht, *International Law*, London, 1937, Vol. I, p. 27, note 1, and Alfred von Verdross, *Völkerrecht*, Berlin, 1937, p. 75.

⁴ See Lauterpacht, *l.c.*, 1934, pp. 45 *et seq.*

⁵ Series A/B.70, pp. 76-9.

⁶ See G. A. Finch, *The Sources of Modern International Law*, Washington, 1937, pp. 98-9.

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peaceful change of an existing *status quo* if the parties concerned are willing either to bring about such a modification by direct agreement or by the submission of the dispute to the judgment of a Court. Again, the analysis of the legal system of the international society from this particular angle proves that it does not go further than is possible within the limits of the overriding system of power politics. The crucial test is, however, provided by those cases in which one of the parties concerned is stubbornly opposed to change, whether peaceful or otherwise. Then a collective system must either be coherent enough to deal constructively with such a situation or face the alternative between 'agreement or war'.¹

The provisions of the League Covenant which are relevant from the standpoint of peaceful change fall into three categories. In the first place, Assembly and Council can deal with any matter affecting the peace of the world on the basis of the general authorization contained in Article 3, paragraph 3, and Article 4, paragraph 4, of the Covenant.² As questions of change, more than anything else, endanger the maintenance of world peace, the League had authority even under this general heading to deal with problems of peaceful change. Furthermore, any matter of this kind which involves a threat of war, endangers international peace or 'the good understanding between nations on which peace depends', falls within the scope of Article 11 of the Covenant. It is also to be kept in mind that Article 15 empowers the Council and the Assembly to recommend changes of the existing *status quo*. For the terms of settlement which these organs may suggest are such as they 'may deem appropriate'³ and the recommendations must be 'deemed just and proper'⁴ by the Council or the Assembly. The problem was, however, regarded as one of such importance by the drafters of the Covenant that they devoted a special article to it. In its original form, as suggested by Colonel House, the article clearly expresses the complementary character of stability and revision in a well-balanced international order: 'The Contracting Powers unite in several guarantees to each other of their territorial integrity and political independence, subject, however, to such territorial modifications, if any, as may become necessary in the future by reason of changes in present racial

¹ Lord Halifax in a speech at Bristol, reported in *The Times*, April 8th, 1938.

² See for an interpretation of these Articles H. A. Smith, 'The Binding Force of League Resolutions', in *The British Yearbook of International Law*, London, 1935, pp. 158-9, and the present writer's *The League of Nations and World Order*, London, 1936, pp. 98 *et seq.*

³ Article 15, paragraph 3.

⁴ *ibid.*, paragraph 4.

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conditions and aspirations, pursuant to the principle of self-determination and as shall also be regarded by three fourths of the Delegates as necessary and proper to the welfare of the peoples concerned, recognizing also that all territorial changes involve equitable compensation and that the peace of the world is superior in importance and interest to questions of boundary.¹ In the course of the drafting, this highly salutary connection between the collective guarantee of the *status quo* and peaceful change was disrupted, and the final Article 19 of the Covenant was considerably watered down compared with the draft suggested by House. The function of the Assembly was limited to that of advising the reconsideration by members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world. Yet the Article does not give any indication of the criteria to be applied for the determination of the inapplicability of treaties. It remains equally silent about what is to happen if the discussions amongst the parties concerned do not lead to a spontaneous modification of the *status quo* by those States. The two cases in which an attempt was made in the practice of the League to make use of this Article² have shown that the members of the League were not prepared to put life into this rather imperfect machinery of peaceful change. In addition, the representatives of *status quo* interests made it understood that in their view Article 19 required unanimity, including the disputants. This meant that the cumbrous procedure of this Article could only be applied with a chance of success if the parties concerned were prepared, anyway, to come to an understanding. If not, the State anxious to achieve a change had to console itself with the beneficial effect of a majority report on world opinion. The revisionist camp argued with equal futility that unanimity was not required, as a vote under Article 19 did not involve a decision, but only gave expression to a wish of the Assembly.³ The same obstacle stood in the way of action on the part of the League under Articles 3, 4, 11 and 15, with the reservation

¹ Draft of Colonel House, July 16th, 1918, Article 20. D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. II, p. 10.

² Request of Bolivia for the modification of her treaty of 1904 with Chile, League Doc., *Records of the First Assembly, 1920, Plenary Meetings*, p. 595, and China's suggestion for the appointment of a committee to examine the means to give effect to Article 19, *Records of the Tenth Assembly, 1929, Plenary Meetings*, p. 2.

³ Compare Paul de Auer, 'The Revision of Treaties', in *Transactions of the Grotius Society*, London, 1933, Vol. 18, pp. 155 *et seq.*, and F. Llewellyn-Jones, 'Treaty Revision and Article 19 of the Covenant of the League of Nations', *ibid.*, 1934 (Vol. 19), pp. 13 *et seq.*

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that in view of the express stipulation to the contrary in Article 15 at least the disputants were not counted in computing the required unanimity of the Council or Assembly.

It would, however, be far from the mark to assume that the absence of legal provisions for change prevented far-reaching alterations of agreements and modifications of the territorial *status quo* from being carried out in the post-1919 period.

An outstanding example is provided by the history of the reparations imposed on Germany by the Treaty of Versailles. The amount of damage for which compensation was to be made was to be determined by an inter-Allied Commission, the Reparations Commission.¹ The Commission was to be composed of delegates of five Allied and Associated powers, permanent members of which were to be the U.S.A., Great Britain, France and Italy.² The amount of the damage for which Germany was to pay compensation was to be determined by the Reparations Commission. The Commission was 'to give to the German Government a just opportunity to be heard'.³ The Commission, in the work of which no American member took part, because of the non-ratification of the Peace Treaties by the United States, fixed the total liability of Germany at £6,600,000,000. The subsequent history of German reparations is too well known to require a detailed narrative. It is only important to remember that essential features of the Dawes Plan, such as the replacement of the Reparations Commission by an American Agent for Reparation, implied an agreed revision of the Treaty of Versailles. Equally, the separation of the question of payment of the reparations from that of transfer, and the limitation of the annual payments made by Germany was only realized at the cost of Germany's creditors, who agreed to this modification of their rights. Finally, the Young Plan cut down the total amount to be paid by Germany by more than half, compared with the figure fixed by the Reparation Commission, and the Lausanne Agreement of 1932 buried the problem by the stipulation of a symbolic payment of £150,000,000 on the part of Germany which was never made.⁴

The Peace Treaties themselves provided a good many revision

¹ Article 233.

² Part VIII, Annex II, No. 2.

³ Article 233.

⁴ See for further details J. M. Keynes, *A Revision of the Treaty*, New York, 1922, John W. Wheeler-Bennett and Hugh Latimer, *Information on the Reparation Settlement*, London, 1930, John W. Wheeler-Bennett, *The Wreck of Reparations*, London, 1933, Cmd. 3343, 3392 and 3484; also E. H. Carr, *International Relations since the Peace Treaties*, London, 1937, and G. M. Gathorne-Hardy, *A Short History of International Affairs*, London, 1938.

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clauses of which in the post-1919 period frequent use was made to secure concessions for the former Central powers. In this way, and, by express modification of clauses of these agreements, a considerable amount of gradual adaptation and mitigation of these treaties was achieved which, by reason of its unobtrusive character, has escaped the publicity it deserved.¹

A different type of revision was heralded by the unilateral denunciation on the part of Persia in 1927 of the capitulation régime existing in that country in favour of foreign nationals. As it was explained in the Circular Note to the foreign legations at Teheran of May 10th, 1927, 'the important changes which have taken place in the situation of this country and in public opinion, render the execution of this intention indispensable'.² In a Declaration of June 16th, 1928, the Nationalist Government of China followed suit and pronounced its intention of liberating itself from 'the shackles of unequal treaties'. 'We are pleased to note that since the latter part of 1926 the spokesmen of the foreign powers have expressed their willingness to negotiate new equal treaties. Now that the unification of China is being consummated, we think the time is ripe for taking further steps and begin at once to negotiate – in accordance with diplomatic procedure – new treaties on a basis of complete equality and mutual respect for each other's sovereignty'.³

Thus the post-1919 inter-State system had retraced its steps. Things were again where they had been in the pre-1914 international society. Peaceful changes were either effected by agreement or by means of a *fait accompli*,⁴ and it required merely particularly favourable circumstances to bring into play the other means of revision which are at the disposal of any power strong enough to have resort to it, change under the threat of force or by the actual resort to war. The Japanese invasion of Manchukuo in 1931 initiated the series of unilateral acts and wars which, with gaining momentum, brought about the *de facto*

¹ Compare the literature quoted above. On the revision of the Lausanne Straits Convention of 1923, see C. W. Jenks, 'The Montreux Conference and the Law of Peaceful Change', in *The New Commonwealth Quarterly*, 1936 (Vol. II), pp. 242 *et seq.*

² A. B. Keith, *Speeches and Documents on International Affairs*, London, 1938, Vol. I, p. 144.

³ Quoted by George W. Keeton, 'The Revision Clause in Certain Chinese Treaties', *The British Yearbook of International Law*, London, 1929, p. 120. Compare, on the Montreux Convention for the Abolition of the Capitulations in Egypt, M. A. Caloyanni, 'The Montreux Capitulations Conference and the Process of Peaceful Change', in *The New Commonwealth Quarterly*, 1938 (Vol. III), pp. 328 *et seq.*

⁴ See H. A. Smith, 'International Law-Making', in *Transactions of the Grotius Society*, London, 1931 (Vol. 16), p. 96.

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revision of the Geneva system.¹ It was the representative of one of the Northern European democracies who raised his warning voice at a time when the collective system might still have benefited from wise counsel: 'The maintenance of peace is, it is true, the object of the League of Nations, but a peace which is not founded on justice contains within itself the seeds of future conflicts.'²

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¹ See, below, Chap. 23.

² Branting (Sweden) in the Fourth Assembly, 1923, *Official Journal*, Special Supplement No. 13, p. 138.

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CHAPTER 17

COLLECTIVE SECURITY

THE element of security seems to be so obviously the central problem of any collective system that it has been frequently identified with all that the League of Nations stands for. In the words of Sir Samuel Hoare, 'collective security, by which is meant the organization of peace and the prevention of war by collective means, is, in its perfect form, not a simple, but a complex conception. It means much more than what are commonly called sanctions. It means not merely Article 16, but the whole Covenant'.¹ While it would be too narrow to equate the notions of collective security and sanctions, the system of the League Covenant is based on the threefold approach to the problem of peace by the roads of pacific settlement of international disputes, disarmament, and security. Therefore, it appears advisable to restrict this term to all the devices provided in the Covenant for the maintenance of the *status quo*. In the balance which the drafters of the Covenant attempted to strike between stability and change, the machinery for change remained somewhat sketchy. The same cannot be said of its complement in the sphere of collective security. While the technical details of this system are rather complicated, the principles of the idea are straightforward enough.

First, any system which does not rely on the pledged word, but envisages the eventuality of a violation of a collective agreement, is based on the assumption that its participants do not merit an unlimited trust in their good intentions. It has been argued that, therefore, sanctions are either valueless or superfluous; for either all States will keep the agreements which they have concluded and then war is impossible and there is no need for collective security, or if this is not the case, then there is no guarantee that States will carry out their obligation to apply sanctions. 'Do what we will, we have no choice

¹ Records of the Sixteenth League Assembly, 1935, *Official Journal*, Special Supplement No. 138, p. 44.

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but, in the last resort, to depend upon the plighted word.¹ If this view were correct, it would not be necessary within national communities to attach sanctions to laws, and the need which has existed since the dawn of humanity for law side by side with morality would never have arisen. The truth seems to lie between the two extremes. In the international society, as in national communities, it can be assumed that the majority of members will conform to generally accepted standards of conduct. It, cannot, however, be taken for granted with equal probability that all members at *all* times will do so. Therefore, the existence in the background of an overwhelming force will reduce the number of the potential law-breakers to those who are actually prepared to take the risk of contravening the law in spite of the heavy odds which, in any properly organized system of security, are arrayed against them.

The second assumption on which the idea of a system of collective security rests is the conviction on the part of the majority, or at least the strongest of its members, that the stabilization of the *status quo* and its protection against overthrow by force, is important enough for any member of the group to make all sacrifices necessary for the attainment of this purpose. Leaving aside completely satiated powers in a dynamic society this mentality depends on the provision for change by orderly methods. For otherwise it may even be doubted whether a group has the moral right to insist on eternalizing an always ephemeral *status quo*. At least it can be said that 'a system which collectivizes the use of force and provides no machinery for the collective revision of the *status quo* is certain to fail'.²

Third, the organization providing for collective security must be so strong that it can effectively deal with any outsider, or defy any member who relies on support from, or at least continuance of vital relations with, a non-member. It has often been maintained that universality is indispensable,³ but this statement seems to be correct only on the assumption of a minimum of efforts on the part of the members of the collective system; for it seems that the difficulties arising out of the non-achievement of this goal can, at least, in theory,

¹ Sir Austen Chamberlain in the Thirty-third Session of the Council, March, 1925, *Official Journal*, 1925, p. 449. See also Voldemaras (Lithuania) in the Ninth League Assembly, 1928, *ibid*, Special Supplement No 64, p. 70, and H. A. Smith, 'Sanktionen und Völkerbunds-Satzung', in *Völkerbund und Völkerrecht*, 1936, pp 599-600.

² Arnold D. McNair, *Collective Security*, Cambridge, 1936, p. 30.

³ See, above, Chap. 14, and the present writer's *The League of Nations and World Order*, London, 1936, pp. 150 *et seq*.

be compensated by an increase in sacrifices on the part of the participants in a non-universal scheme.

Fourth, if the system is to represent an alternative to power politics and to the customary methods of increasing 'security' in a society based on the rule of force it must be different from an alliance of the traditional type. While this object can best be achieved if the security system is open to every genuine would-be participant, the minimum requirement appears to be that the system is not directed against any concrete power. It may be that in circumstances in which wars are not limited to 'accidental' wars, but in which a collective system is faced with a State or group of States bent on the overthrow of the *status quo* by force, this distinction is merely a nominal one. Yet, even in such a situation, the prime object of the collective scheme must remain the positive task of encircling any aggressor and not any specific power.¹ As it was expressed in a British Memorandum submitted to the Committee on Arbitration and Security of the Preparatory Commission for the Disarmament Conference, 'such treaties can only be described as "security" agreements, in the present-day sense of the word, if they are directed solely to the preservation of peace and involve no prejudice to the rights or interests of third parties – if, in short, they are imbued with the spirit of the Covenant'.² For 'if there be picking and choosing, and jockeying and favouritism, if one aggressor is to be given a free hand while another is restrained, it is far better that the old system should return and that each nation should do what it can to prepare for its own defence'.³

(Thus collective security can be defined as collective action taken in the interests of an established international order to prevent or restrain a State from resorting to armed force.⁴

The League system of collective security is laid down in Articles 10 and 16 of the Covenant. The former Article contains a mutual undertaking on the part of the members of the League to respect and preserve against external aggression the territorial integrity and political independence of all members of the League. It has been a matter of controversy as to what this guarantee means. According to Article 10, the Council is charged with the duty of advising members upon the

¹ So rightly Mr. Winston Churchill, *Hansard, House of Commons*, March 26th, 1936, Vol. 310, col. 1,529.

² League of Nations, *Official Journal*, 1928, p. 700.

³ de Valera (Irish Free State) in the Sixteenth Assembly, 1935, *Official Journal*, Special Supplement No. 138, p. 82.

⁴ See for other definitions the speech of the Chinese delegate in the Sixteenth League Assembly, 1935, *Official Journal*, Special Supplement No. 138, p. 4, Philip G. Jessup, *The United States and the Stabilization of Peace*, New York, 1935, p. 110, and McNair, *l.c.*, p. 17.

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means by which this obligation shall be fulfilled. This means that, apart from any concrete obligation undertaken specifically in other articles of the Covenant, it is left to the members to decide how much they are prepared to do in order to honour their obligations. The minimum duty which a member State has undertaken, however restrictively this Article may be interpreted, is to do nothing which can be interpreted as a condonation of the act of aggression. Thus the doctrine of non-recognition of changes achieved by external aggression which impairs the territorial integrity and political independence of a League member must necessarily be implied in Article 10 of the Covenant.¹

✓ The members of the League have undertaken more far-reaching obligations in three specified² cases. Their purpose is to give additional protection to a member State willing to submit his conflict to the arbitration and conciliation procedure laid down in the Covenant, and to provide a 'cooling-off' period between an incident or other causes of war and the actual resort to war. It appears, from the selection of these cases in which a member State receives the special assistance from co-members provided for in Article 16, that the drafters of the Covenant were not so much concerned with premeditated acts of aggression, in which an unscrupulous government makes use of the various loopholes left open by this narrow enumeration of three clearly defined cases, as with the danger of rash and ill-advised action on grounds of anger and national prestige. It was mainly left to the French delegates to sound a warning against a too optimistic approach to this problem: 'History showed that all recent wars had begun with a sudden attack. Such was the necessity of modern war: war could not succeed unless it was unexpected and crushing'.³ The logical implications of this proposal were automatic and comprehensive ✓ sanctions.

Article 16, in the form in which it was adopted by the Peace Conference, fell rather short of the comprehensive and elaborate suggestions of the French Delegation which included an international force, composed of national contingents and a permanent international staff.⁴ The prevailing attitude was, however, the result of very different considerations, chief amongst which was

¹ See Oppenheim-Lauterpacht, *International Law*, London, 1937, Vol. I, p. 141.

² Articles 12, paragraph 1, 13, paragraph 4, and 15, paragraph 6.

³ Larnaude (France) in the Twelfth Meeting of the Drafting Commission, H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. III, p. 345.

⁴ *ibid.*, pp. 242 *et seq.*

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an easy-going optimism and 'confidence in the good faith of the nations who belong to the League'.¹ Coupled with it was an exaggerated belief in the efficacy of economic sanctions, derived from the very special conditions in which the blockade against Imperial Germany had been decisive in conjunction with, as was too quickly forgotten, the major military efforts of the Allied and Associated Powers. In the words of President Wilson, the economic sanctions of the Covenant would be 'more tremendous than war'. 'It is the most complete boycott ever conceived in a public document, and I want to say with confident prediction that there will be no more fighting after that. There is not a nation that can stand that for six months.'² Further more, there was the horror of inflexible agreements which is justified in any system lacking efficient machinery for peaceful change, and which Hume eloquently voiced in connection with a very different constellation of powers: 'We are so alert in defence of our allies that they always reckon upon our force as upon their own; and expecting to carry on war at our expense, refuse all reasonable terms of accommodation.'³

In such circumstances, a compromise between the two schools of thought was the only alternative to a deadlock. France, being anxious not to forgo the support of her former allies in a future contingency, was faced with the dilemma whether to enter into a League of Nations as it appeared acceptable to other States, particularly Great Britain and the U.S.A., or to stand alone.⁴ Both Anglo-Saxon powers were, however, prepared to meet the French claim for security, not only by the measures taken in the Treaty of Versailles for the immediate disarmament of Germany and the demilitarization and occupation of the Rhineland, but also by special treaties of assistance to France in the case of an unprovoked aggression by Germany.⁵

Thus the automatic application of sanctions against an aggressor, within the narrow meaning of Article 16, was limited to the sphere of

¹ Wilson in the Eighth Meeting of the Drafting Commission, *ibid.*, p. 297.

² Ray Stannard Baker and William E. Dodd, *The Public Papers of Woodrow Wilson*, New York, 1927, Vol. II, pp. 3, 29, 256. See also Paul Hymans (Belgium) in the Fifth League Assembly, 1924, *Official Journal*, Special Supplement No. 23, p. 208.

³ D. Hume, *Essays, Literary, Moral and Political*, London, 1875, p. 354.

⁴ Bourgeois (France) in the Eighth Meeting of the Drafting Commission, Miller, *l.c.*, Vol. II, p. 297.

⁵ Text in J. W. Wheeler-Bennett and F. E. Langemann, *Information on the Problem of Security*, London, 1927, pp. 229 *et seq.* As the British-French Treaty was to come only in force with the ratification of the American-French Treaty, both agreements fell with the non-ratification of the Treaty of Versailles by the U.S. Senate.

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economic sanctions. In the field of military sanctions any decision was left to the League members, and the function of the Council was restricted to mere recommendations on the question 'what effective military, naval, or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League'.¹ In order to facilitate the application of sanctions, the League members further agreed on mutual economic, financial and military support in any case in which economic and military sanctions should actually become necessary, including a right of passage to the forces of League members engaged in military operations of this kind.² Finally, the penalty of expulsion of a pact-breaker by a unanimous vote of the Council, apart from that country, was regarded as a completion of the League's ban against the aggressor.³

There can be no doubt that a great amount of the confidence displayed by the drafters of the Covenant was based on their firm belief that the League of Nations would be universal, at least in the sense of relative universality,⁴ and that it would turn 'the unorganized Family of Nations into an organized community of States'.⁵ When it became clear that the United States would remain aloof and that the U.S.S.R. were more than a transient phenomenon, the original proposition appeared in a different light. The share of the members of the League in potential responsibilities and sacrifices increased, particularly heavily in the case of a sea power such as Great Britain. Now began the process of a restrictive interpretation of Article 16 which found telling expression in the interpretative resolutions adopted by the Second Assembly in 1921 and in the disastrous policy of non-application of this Article in cases which unmistakably called for coercive action.⁶ There has been an attempt to justify the passivity of the League members in cases such as the Polish-Lithuanian conflict over Vilna, the war between Greece and Turkey, or the Japanese adventure in Manchukuo on the grounds that the League members were free to decide for themselves whether the aggressors had resorted to war. In the opinion of a learned writer, 'it is probable that by refraining from considering Japan as having committed a breach of the Covenant, members of the League did

¹ Article 16, paragraph 2, of the Covenant.

² *ibid.*, paragraph 3.

³ *ibid.*, paragraph 4. See also the French draft, Miller, *l.c.*, Vol. II, p. 241.

⁴ See, above, Chap. 14.

⁵ L. Oppenheim, *International Law*, London, 1920, Vol. I, pp. 8-9.

⁶ See, above, Chap. 14 and, below, Chap. 23.

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not themselves become formally guilty of a patent disregard of their legal obligations'.¹ Yet, as H. A. Smith has rightly pointed out, arguments of this sort are merely of a technical character and are in themselves an admission that the guarantee and security system of the League does not work in all cases; for to assume that there is any difference in law between the Japanese aggression in Manchukuo and the Italian attack on Abyssinia is merely grotesque.² The only difference which exists between the two cases is the fact that economic sanctions against Japan could have been backed only by the full use of British sea power. The burdens of military measures would have fallen nearly exclusively on one country, which is not exactly the implication of a system of collective security proper.³ In the case of Italy, however, both the strategic position of the aggressor and of its victim were much more favourable from the standpoint of the collective system. Thus it is only fair to regard the Italo-Abyssinian War as the test case of the League system. This experiment and its failure offer lessons which are of permanent value.

In the first place, Italy's imperialist challenge to the League was open and defiant from the outset. While the Italo-Abyssinian Conciliation Commission was holding its first session, Signor Mussolini put forward his conception of the problem: 'We have old and new accounts to settle; we will settle them. We shall take no account of what may be said beyond our frontiers, because the judges of our interests and the guarantors of our future are we, only we, exclusively we and nobody else. We will imitate to the letter those who are giving us a lesson. They have shown that when it was a question of creating an empire, or of defending it, they never took at all into account the opinion of the world.'⁴ It must be added in fairness to Italy that shortly before the Italian invasion the Abyssinian threat to the Italian colonies was 'aggravated by the fact that the creation of a neutral zone announced from Addis Ababa with specious motives constitutes only a strategical move destined to facilitate the assembly and the aggressive preparation of the Abyssinian troops'.⁵

Second, the dilatory attitude on the part of the League members

¹ Oppenheim-Lauterpacht, *l.c.*, Vol. II, p. 135.

² H. A. Smith, *l.c.*, p. 602.

³ Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, pp. 412 *et seq.*

⁴ *The Times*, June 10th, 1935.

⁵ *ibid.*, October 4th, 1935.

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during three-quarters of a year, whilst Italy prepared for war without much disguise,¹ can be explained only by the argument that the preventive machinery of the Covenant is so weak as to be almost non-existent. Again, a careful examination of the system of the Covenant shows that, if the will to apply it had existed, Articles 3, 4, 11 and 15 could easily have provided the required framework. Yet, more important is the fact that not even the economic sanctions of the Covenant were put into force as was provided in the Covenant. Instead of automatic, simultaneous and comprehensive application, it was regarded wise to do so only gradually.

Third, the lack of adequate preparation on the part of a League Secretariat which was never encouraged to busy itself with this sphere of its potential activities necessitated an amount of improvisation which in itself caused further delay.² To leave this work in the hands of a Committee of Co-ordination which was not organically connected with the League machinery meant in effect, as was pointed out at the time by Sir Alfred Zimmern, that the powers returned to the pattern of 'a diplomatic conference of the ordinary pre-war type'.³

Fourth, the prolonged discussions over the application of the oil sanction proved that, while it may be feasible to apply only economic sanctions in the first place and to keep the military weapon in the background, it is a pacifist illusion to assume that the application of the one is possible without willingness to supplement it by these other forms of pressure. The Duce had announced in advance: 'To sanctions of an economic character we will reply with our discipline, with our sobriety, and with our spirit of sacrifice. To sanctions of a military character we will reply with orders of a military character. To acts of war we will reply with acts of war.'⁴ As leading Statesmen of the sanctionist countries had publicly announced that in no circumstances would they support the application of military sanctions against Italy, it was left to the aggressor to define what he chose to regard as economic and what as military sanctions. Mussolini was not slow in announcing that the application of an oil embargo against Italy would fall into the latter category, and thus the *one* economic measure which, if resorted to in time,

¹ See the present writer's 'The Italo-Abyssinian Dispute', in *The New Commonwealth Quarterly*, 1935 (Vol. I), pp. 139 *et seq.*

² *Ibid.*, pp. 231 *et seq.* and pp. 332 *et seq.*

³ *The Contemporary Review*, 1935, p. 518.

⁴ *The Times*, October 3rd, 1935

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might have decisively affected the course of events was postponed again and again and never put into force.¹

Fifth, as has been discussed in a previous chapter,² the attitude of the U.S.A. was in that dispute more helpful and co-operative than ever before. It is true that oil was not included in the original embargo imposed by the President under the neutrality legislation,³ and it might even have happened that some of the American oil companies might have disregarded the warning of the Roosevelt administration against the increased export of this and other commodities;⁴ while it would not, however, have been likely that the same government would have challenged the legality of a League blockade against Italy after it had expressed its considered opinion in a note to the League of its 'sympathetic interest' in the concerted efforts of the League members.⁵ As for Germany, the outsider whose movements the French Government watched with natural anxiety, she had made it known in the early stages of the sanctionist experiment that 'the rôle of war profiteer' would be incompatible with Germany's policy of strict neutrality in this conflict.⁶ Only when the leaders of the Third Empire perceived that the League members were wavering did they assist Italy by the flanking movement of denouncing the Locarno Treaties on March 7th, 1936. This sudden development gave Italy the opportunity of using her position as a guarantor Power under the Locarno Treaties as a trump card in her own game. Thus the partial and gradual application of Article 16, conformity with which would have necessarily involved the rupture of diplomatic relations between the League members and the aggressor State, led to the paradoxical situation of a condemned culprit posing as a judge in the trial of an alleged treaty violation by another State. The comic nature of the situation was increased even more by the fact that it was left to Signor Grandi, the Italian representative at the Council meeting in London, to point out the obvious contradiction between the position of a country subjected to sanctions and its task as a guarantor Power.⁷

Finally, it needs stressing that, in spite of many previous disappointments, the smaller League members, even those in positions

¹ See for the details the present writer's 'The Italo-Abyssinian Dispute', *L.c.* Vol. I, pp. 242 *et seq.* and pp. 332 *et seq.*, and Vol. II, pp. 75 *et seq.*

² Compare, above, Chap. 14.

³ See Leslie Buell, *American Neutrality and Collective Security*, Geneva, 1935, and *L.c.* in note 1, above, Vol. I, pp. 243 *et seq.* ⁴ *ibid.*, p. 336. ⁵ *The Times*, October 28th, 1935.

⁶ *Frankfurter Zeitung* and *The Times*, November 8th, 1935.

⁷ *The Times*, March 19th, 1936, and *Frankfurter Zeitung*, March 20th, 1936.

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as exposed to Italian counter-measures as Greece and Yugoslavia, loyally followed the lead of Great Britain and France in the imposition of economic sanctions and in military and naval preparations under Article 16, paragraph 3, of the Covenant.

Whilst the Italo-Abyssinian war put to the test the thesis that sanctions did not work, even if applied at all, in the peculiar half-way house between power politics and a community system as represented by the League of Nations, already, years back, League members had attempted to safeguard their national security in other ways regarded as more realistic.

Regional understandings, as they were called in Article 21 of the Covenant, seemed to provide such an alternative. An area of this kind was defined by the Polish representative 'as a territorial unit within the limits of which the existence of interests very closely bound together makes possible the organization of a guarantee system sufficiently complete and capable of assuring a high degree of security to all the parts constituting this unit'.¹ It is true that regions of this kind exist: the Danubian area, Eastern, Northern and Western Europe, the Mediterranean or the Near East. As, however, a closer analysis of regional groupings such as the Little Entente or the Locarno Agreements could have taught the protagonists of regionalism, the more limited scope of an area does not necessarily change the mental approach to the problem on the part of those who purported to replace the universal sanctions system of the Covenant by the more concrete obligations of regional agreements. Thus the Little Entente was nothing else but a defensive alliance of the three powers who had profited by the dismemberment of Hungary and who, by their steadfast antagonism to revision, were bound to look at Hungary as the only enemy against which this collective system in miniature was ever supposed to work. In addition, it derived its prestige from its connection with the French system of alliances which kept in check Germany, otherwise a permanent threat to the equilibrium maintained by the Little Entente.²

The Locarno Agreements avoided this undisguised stamp of an alliance by the inclusion of Germany as a partner to the treaties. Yet the fact that the two potential enemies could only be induced to sign this agreement in co-operation with Great Britain and Italy as

¹ *Records, Seventh Assembly (1926), Third Committee*, p. 36.

² See for a more detailed analysis the present writer's *The League of Nations and World Order*, London, 1936, pp. 160 *et seq.*

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guarantors indicates that this regional pact has all the characteristics of a balance of power system.¹ The history of regional understandings within the framework of the League has proved that, in a political system essentially based on power politics, this apparent alternative to Article 16 is nothing but a covered-up return to the pre-1914 patterns. This return to old customs is still more patent, in the pacts of mutual assistance such as the French-Soviet Treaty of 1934.² No longer is there any doubt against which country a specific pact is to be directed. As the drafting of that agreement shows, it only comes into operation supplementary to the sanctions system of the Covenant. The very need for treaties of this sort proved that League members either assumed that the system of the Covenant would be inadequate, inoperative or too slow to be of use, or that the other members of the League would not honour their obligations under the Covenant. Thus they offer the most open refutation that can be imagined of the solution envisaged by the drafters of the Covenant in a world imbued with century-old traditions of power politics.

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² See Pierre Cot, 'Le Traité Franco-Sovietique d'Assistance Mutuelle', in *The New Commonwealth Quarterly*, 1935 (Vol. I), and for the text of the Treaty, *ibid.*, pp. 166 *et seq.*

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CHAPTER 18

DISARMAMENT

THE disillusionment through which the world has passed since the repeated failures of Disarmament Conferences in the post-1919 period found its expression in a much discussed statement relating to defence, submitted to the House of Commons by the Prime Minister in 1935: 'Events in various parts of the world have shown that nations are still prepared to use or threaten force under the impulse of what they conceive to be a national necessity; and it has been found that once action has been taken the existing international machinery for the maintenance of peace cannot be relied upon as a protection against an aggressor.'¹

It seems incomprehensible to-day that Statesmen and public opinion should ever have seriously believed in the possibility of establishing international order by the direct methods of the abolition and prohibition, or serious limitation, of armaments. Therefore, it might be regarded as going rather far to weary anyone who has gone through these experiences of our own generation, with the examination of this most outstanding failure in the sphere of international collaboration. There are, however, weighty reasons why it is inadvisable to ignore this question. Already voices can be heard who wish to try the same old slogans on another post-war world, which, if not quite as credulous as after the first world war, is apparently expected to swallow another dose of the disarmament drug. Second, disarmament as envisaged by the combined system of the Covenant and the Peace Treaties was a proposition entirely different from that which the protagonists of disarmament, sole and simple, made of it. Third, particular instances of successful limitation of armaments still merit analysis, for only in this way can unjustified generalizations be avoided. Fourth, the discussions in the experts' committees of the Disarmament Conference form an invaluable store of material for the analysis of the functions of specialists appointed by governments

¹ Cmd. 4827, 1935, p. 4.

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pursuing power politics, yet professing to adhere to the principles of the Covenant.

In Wilson's Fourteen Points the problem was formulated as the giving and taking of 'adequate guarantees that national armaments will be reduced to the lowest point consistent with domestic safety'.¹ *Domestic* safety was replaced by *national* safety in Article 8 of the Covenant, and, in the absence of a collective force, it was not unreasonable to grant that national armaments should also be adequate for 'the enforcement by common action of international obligations'.² The League Council was charged with the initiative in the drafting of suitable plans and the supervision of the agreements after their adoption by the members of the League.³ A permanent commission was to advise the Council on disarmament and on military, naval and air questions generally.⁴ The venture was to begin with the disarmament of the former Central powers 'in order to render possible the initiation of a general limitation of the armaments of all nations'.⁵ The legal quibble whether a legal obligation existed on the part of the former Allied powers to follow suit after Germany's disarmament had been effected, or whether the above sentence merely expresses an intention on their part, based on the assumption that a general and co-operative international order would be established,⁶ is a relatively unimportant pastime indulged in by legal speculators. Paul Boncour, in his capacity as French delegate at Geneva, affirmed this legal duty while the British Government denied it.⁷ The essential point is that the unilateral disarmament of any Greater power could only be expected to last as long as the States interested in this state of affairs were prepared to enforce their interpretation of Article 8 of the Covenant by all means required; for exactly the same reasons which made it essential for them to maintain their armaments, were imperative, on the other side for re-armament. The unique chance of 1919 consisted in the fact that the defeat of Imperial Germany made it possible to enforce disarmament on a group of countries, and in the further circumstance that Germany was at that time governed by coalitions which believed in the wisdom of this measure and in the League

¹ Point 4.

² Article 8, paragraph 1, of the Covenant.

³ *ibid.*, paragraphs 2 and 4.

⁴ Article 9.

⁵ Introduction to Part V of the Treaty of Versailles.

⁶ Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, p. 333.

⁷ Compare Oppenheim-Lauterpacht, *International Law*, London, 1935, Vol. II, pp. 104 *et seq.*

of Nations generally. Thus the eternal argument about the difficulties of the first step was solved for a considerable period, during which others might well have taken the second step. In the hard language of Lloyd George, 'the first part of this [disarmament] was achieved to the complete satisfaction of the Allies. As to the second part, with the exception of Britain, the victors were guilty of an outrageous breach of faith. In effect and in practice they repudiated the undertaking they had given'.¹ In view of the elasticity of Article 8, paragraph I, not even the non-universality of the League provides a satisfactory explanation of this fateful sin of omission.² For the members of the League were free either to strengthen the system of collective security, or, if this was not possible, to create an atmosphere of real goodwill by frank discussions on a basis of equality with the Government of the German Republic of the difficulties obstructing action which was anxiously awaited by all the progressive forces in Germany. That this was not too much to hope for is proved by the fact that Great Britain, technically in contravention to its legal obligations under a multilateral agreement, concluded a bilateral naval agreement with the Third Empire which amounted to an acquiescence in Nazi naval re-armament within the limits of this Treaty. The German claim for equality even in principle went unheeded until it was Hitler *ad portas*, and by then the proportions of the whole problem had completely changed. The alternative of solving the disarmament problem by coupling it with the question of security was tried, but failed. The Draft Treaty of Mutual Assistance of 1923³ and the Geneva Protocol of 1924⁴ bear witness to the difficulties which the members of the League were not able to overcome, for the one-sided emphasis on the interrelationship between disarmament and security obscured the equally close links between both these indispensable elements of a collective system and the problem of peaceful change. It would have been unnatural for any State with strongly held claims for revision to support wholeheartedly a system eternalizing a *status quo* which, rightly or wrongly, it regarded as unjust. Nor could any 'have' power, knowing of such aspirations, have relied on the co-operation of a 'have-not' State

¹ D. Lloyd George, *The Truth about the Peace Treaties*, London, 1938, Vol. II, pp. 1,405.

² See, above, Chap. 14.

³ Assembly Documents A.111, 1923, IV; A.35, 1924, IX; A.35 (a), 1924, IX; A.35 (b), 1924, IX; and J. W. Wheeler-Bennett and F. E. Langermann, *Information on the Problem of Security*, London, 1927, pp. 91 *et seq.*

⁴ Assembly Document C.582, M.199, 1924, IX, and P. J. Noel-Baker, *The Geneva Protocol*, London, 1925.

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in such an effort. While such tensions existed the atmosphere of distrust and fear was bound to continue and any integration of the collective system into a true community was out of the question. It has been maintained that the Geneva Protocol has met this objection in providing as it does for a comprehensive system of arbitration. This argument can only provide an adequate answer if the machinery for the pacific settlement of international conflicts is not limited to decisions on the basis of existing international law. From the point of view of peaceful change, the procedure contemplated by the Protocol does not represent any improvement as compared with the Covenant. The reservation of domestic jurisdiction is re-affirmed,¹ and, according to the Politis-Beneš report submitted to the Assembly, the equity functions entrusted to the arbitrators are only of a supplementary character. The static conception of peace which predominates throughout the Protocol was clearly set out in the passage of the report referring to the revision of treaties. 'There is a third class of disputes to which the new system of pacific settlement can also not be applied. These are disputes which aim at revising treaties and international acts in force, or which seek to jeopardize the existing territorial integrity of signatory States. The proposal was made to include these exceptions in the Protocol, but the two Committees were unanimous in considering that, both from the legal and from the political point of view, the impossibility of applying compulsory arbitration to such cases was so obvious that it was quite superfluous to make them the subject of a special provision. It was thought sufficient to mention them in this report.'²

The view can obviously be taken that first must come the establishment of order, and that only on this basis can preparation be made for more elaborate structures such as machinery for revision. The prospect, however, that the immediate position of countries like France and her Eastern Allies would be unilaterally improved by the acceptance of a plan of this kind, while other countries had only to face increased commitments and responsibilities, seemed in countries like Great Britain or Italy to outweigh the advantages which might have been derived, in the long run, for all concerned from an acceptance of the Protocol. Thus the most determined

¹ Article 5.

² *Official Journal*, Special Supplement No. 23, 1924, p. 487. See also Count Apponyi's (Hungary) criticism in the first Committee of the Fifth League Assembly, 1924 (*Records of the First Committee*, pp. 66-7) and Sir John Fischer Williams, *International Change and International Peace*, Oxford, 1932, p. 42.

effort in the history of the League to achieve disarmament combined with collective security and arbitration failed. Since no serious effort beyond the Covenant itself had been made to include revision in the trinity of approaches to the problem of international order, what remained to solve the problem of disarmament which Beneš called 'the expression of the political, social and, above all, psychological state of the world'?¹ The answer appeared to be surprisingly simple: disarmament. The advocates of this direct method derived comfort and intellectual ammunition from the results of the Washington Conference of 1921.² As at a later stage happened with the Locarno Agreements, the particular circumstances on which success depended were not adequately analysed, and the results of these efforts were regarded as being capable of general application.

A closer examination of the negotiations of the Pacific powers at Washington shows that the agreement regarding naval armaments is certainly not the result of discussions which mainly centred round the figures and ratio of tonnage or the number of vessels. First, the States arrived at an understanding on the main issues, the independence of China and the safeguarding of their territorial and other interests.³ In addition, they created demilitarized zones to the extent that, within them, the *status quo* at the time of the signature of the Treaty was to be maintained regarding fortifications and naval bases.⁴ Furthermore, all future controversies arising out of any Pacific question which could not be settled between the parties concerned was to be submitted 'to a joint Conference to which the whole subject will be referred for consideration and adjustment',⁵ and a corresponding procedure was provided in case of 'aggressive action of any other Power'.⁶ Once having established a balance of power between the principal Pacific States, the question of naval armaments became a matter of comparatively minor significance in spite of the not inconsiderable technical difficulties involved.⁷ What had been achieved however was not disarmament,

¹ *Official Journal*, Special Supplement No. 44, 1926, p. 23.

² Compare S. de Madariaga, *Disarmament*, London, 1929, pp. 84 *et seq.*

³ Treaty between the British Empire, France, Japan, and the United States of America relating to their insular possessions and insular dominions in the Pacific Ocean, December 13th, 1921, Article I, paragraph 1.

⁴ Treaty for the Limitation of Naval Armament, February 6th, 1922, Article XIX. See also J. H. Marshall-Cornwall, *Geographic Disarmament*, London, 1935, pp. 99 *et seq.*

⁵ Treaty of December 13th, 1921, Article I, paragraph 2.

⁶ *ibid.*, Article II.

⁷ See Sir Herbert Richmond, *Sea Power in the Modern World*, London, 1934, *passim*.

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but a limitation of competitive armaments to proportions compatible with the financial resources of these naval powers. When the political basis of these agreements broke down, the superstructure of the armaments agreement was bound to suffer the same fate.¹

It does not, therefore, require detailed analysis of the reasons why the World Disarmament Conference could not possibly succeed when it attempted to short circuit the problem by aiming at disarmament pure and simple. If it is suggested that the Locarno Agreements provided a basis corresponding to the political settlement amongst the Pacific States, the reply is that this pact may have created a temporary balance in Western Europe, but it could not solve the series of questions which Eastern Europe, and the neighbourhood between these States and the U.S.S.R., involved. It was for this very reason that treaties which dealt in detail with questions of arbitration and security contained only scant reference to the disarmament question. All that the Contracting Parties could undertake was to promise each other 'to give their sincere co-operation to the work relating to disarmament already undertaken by the League of Nations and to seek the realization thereof in a general agreement.'² Similarly, the signature of the Kellogg Pact could hardly be regarded as an adequate foundation for disarmament on a general scale; for, in spite of its universal character, the merely negative statement of the outlawry of war as an instrument of national policy could only be regarded as a gesture which would ultimately stand or fall by the positive steps taken to make possible the settlement by pacific means of all disputes or conflicts.³

While the Preparatory Commission of the Disarmament Conference busied itself with collecting and sifting answers to a Questionnaire prepared by the Council, and elaborated drafts which omitted only one minor point, the figures of the actual disarmament and the ratio between the various powers,⁴ it was left to the representative of a non-member State to reduce the whole procedure to absurdity. Litvinov amused himself, and anyone who had not lost his sense of humour in watching those weary discussions, by the proposal of universal and complete disarmament within one year,

¹ Compare George W. Keeton, 'The Breakdown of the Washington Treaties and the Present Sino-Japanese Conflict', in *The New Commonwealth Quarterly*, 1938 (Vol. IV).

² Final Protocol of the Locarno Conference, 1925 (Cmd. 2525).

³ Article 2. See also, below, Chap. 20.

⁴ See for details John W. Wheeler-Bennett, *Disarmament and Security since Locarno*, London, 1932, pp. 43 *et seq.*

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or within a period of four years 'in the case of the capitalist States rejecting the immediate abolition of standing armies'. In order to achieve this rather fundamental change, radical measures were required: disbandment of all armed land, air and naval forces; abolition of the ministries and chiefs of staff; destruction of all arms, warships, military aeroplanes, fortresses and factories for military production; prohibition of military propaganda and instruction.¹ When this most direct approach to the problem did not provoke enthusiastic support amongst the other members of the Commission, the Foreign Commissar of the U.S.S.R. produced a second draft for gradual disarmament. This blue print contained the rather astounding proposal that the strongest powers should reduce their armaments at a quicker pace than medium powers and the smallest category. Another brain wave, which is worthy of recording, was to model some of the clauses regarding the prohibition of tanks, long-range guns and heavy artillery on the corresponding clauses of the Peace Treaties of 1919. Finally, the *enfant terrible* of Geneva gave expression to his belief in the helpfulness of military experts by suggesting the establishment of a permanent international commission of control, composed of parliamentarians and workers' representatives.² When the discussion of these proposals had to be faced 'the only factor which prevented most of the delegates from rejecting them outright was the desire not to provide the Soviet Government with fresh material for propaganda'.³

The majority of the Commission chose to proceed along the thorny road which they had trodden for three years, and the League powers in the end had to face the inevitable, the World Disarmament Conference. The disagreement on points of principle was as wide as ever before. France insisted on the formula of disarmament *and* security, Germany demanded with increasing impatience full equality of rights and Great Britain suggested a solution along the lines of qualitative disarmament. As, however, the aggressive character of a weapon does not so much depend on its type as on the function which it is supposed to fulfil, Sir John Simon's idea did not prove acceptable, and the gulf between the French and German theses could not be bridged without a resolute attack on the problem of peaceful change, a venture which would not have

¹ League Doc. C.P.D.107.

² Article 47. See also C.165, M.50, 1928, IX.

³ Wheeler-Bennett, *l.c.*, p. 239.

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had any chance of success in an atmosphere ripe for the re-armament race about to begin.¹

Following in Litvinov's footsteps, President Hoover, in the summer of 1932, made drastic proposals for the reduction of armaments by a schematic decrease of about one-third, and the abolition of certain classes of weapons. While a more polite reception of these suggestions was due to their originator, their fate was the same as that of the Russian drafts.² One day before Hitler's speech to a specially convened session of the Reichstag, the new President, Roosevelt, attempted a last-minute direct approach 'as a first step in disarmament to be followed by other measures'.³ His suggestion was to accept immediately the restrictive parts of the British plan, submitted to the Conference on March 16th, 1933, by Ramsay MacDonald, the British Prime Minister.⁴ Furthermore, the participants of the Conference should pledge themselves not to increase their armaments and to agree not to send any 'armed force of whatsoever nature across their frontiers'.⁵ Hitler, in his speech of May 17th, 1933, devoted some friendly words to Roosevelt's 'magnanimous proposal'.⁶ German re-armament had, however, begun in earnest, if still under a carefully guarded camouflage. When Germany, on October 14th, 1933, formally withdrew from the Disarmament Conference, and it became increasingly clear that none of the Versailles powers was prepared to enforce the letter of that Treaty, the wheel had come full circle and the world was poorer for the loss of a long-cherished illusion.

The most amazing feature of this long-drawn-out failure was the attitude of the man in the street, who all over the world fervently hoped with incredulous faith and touching sincerity that, though the technical obstacles were apparently stupendous, the experts were ceaselessly engaged in solving them and would at last certainly succeed in producing a draft convention fair and acceptable to all. While it would be unjust to make too much of the argument that military, naval and air officers are not likely to provide working schemes for their own unemployment, or at least retirement, it must

¹ Compare Zimmern, *L.c.*, pp. 408 *et seq.*, and G. M. Gathorne-Hardy, *A Short History of International Affairs*, London, 1938, pp. 335 *et seq.*

² League Doc. 1932, IX, 64, Vol. I, pp. 122-4.

³ *ibid.*, 1933, IX, 10, Series B, Vol. II, pp. 461-2.

⁴ *Documents of the Disarmament Conference*, 157(1), Vol. II, pp. 476 *et seq.*

⁵ Series B, *L.c.*, Vol. II, pp. 352 *et seq.*

⁶ John W. Wheeler-Bennett and Stephen A. Heald, *Documents on International Affairs*, 1933, London, 1934, pp. 196 *et seq.*

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be admitted that, in accordance with their whole upbringing and traditions, they would probably not bring an unlimited enthusiasm to their task. The essential problem was, however, of a different kind. What was lacking was the political agreement between the governments, without which disarmament was not feasible. While the governments were approaching this problem in a spirit of competition and power politics, the function of their service experts could not be to transform themselves into peace doves. It was their job to protect the special interests of the government which appointed them,¹ and to see to it that any limitation of armaments should not adversely affect the relative position and strength of their own country in the balance of the contending forces. The Report of Sub-Commission A of the Preparatory Commission for the Disarmament Conference offers a wealth of material in this respect. Within the compass of this chapter, it is only possible to spot a few of the beauties buried in this document.²

In order to be quite sure of its ground, the Commission spent considerable energy on the arduous task of defining the term 'armaments'. Needless to say, agreement could not be achieved on this question. While the delegations of the British Empire, Bulgaria, Finland, Germany, the Netherlands, Spain, Sweden and the U.S.A. favoured a more limited definition, a group, led by France, Italy and Japan suggested a distinction between peacetime and wartime armaments, the latter including trained reserves, mobilization material and 'all other personnel and material that can be brought into action in the course of hostilities by means of the general resources at the disposal of each country'.³ Already at this stage it might have been obvious that it would have been a Sisyphean task to conceive a satisfactory ratio between the various powers of their *potentiel de guerre*, but on the experts went. A difference of opinion became evident from the start on a point of detail which represented one of the many obstacles to agreement throughout the discussions, the question of the trained reserves. Countries with limited professional armies had a tendency to stress the importance of the considerable reserves which accumulated in countries with conscript armies, whereas they indulged in under-statements regarding the military value of unofficial and para-military organizations, favoured particularly by countries prevented from conscription by the Peace

¹ See Madariaga, *l.c.*, pp. 78 *et seq.*

³ *ibid.*, p. 11.

² C.P.D.28, 1926.

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Treaties of 1919.¹ Another distinction which gives an indication of the subtlety of the problem is that between limitation and reduction of armaments. While by limitation of armaments is to be understood the fixing of levels of armaments which the various countries agree not to exceed, by reduction of armaments is meant the steps taken by a country whose armaments exceed the fixed level of limitation to reduce them to that level. On this abstract question, strange to relate, unanimity could be achieved in the Commission.²

As soon, however, as a concrete problem, such as that of the limitation of military expenditure or of civil aviation, had to be tackled, the experts proved to be nothing but the exponents of the conflicting national policies of the governments which they represented. The majority of the Commission agreed that the personnel and material employed in civil aviation constituted possible war armaments of very high value on account of the ease and rapidity with which they can be converted into use for military purposes. The delegations of Germany and the United States of America, however, totally differed from this view and, in spite of their admission that 'the establishment of a distinction between civil and military aeroplanes simply on the basis of their distinctive technical characteristics must be recognized as impossible',³ they maintained that 'civil aviation as such is of comparatively little value as a possible war armament'.⁴ The German Delegation attached such importance to the question that, notwithstanding their own detailed comments on this issue, they put on record their rather uncomplimentary view that they had 'always disputed the competence of military experts to give authoritative judgments on matters of civil aviation, including the standards of comparison between civil and military aviation'.⁵

Equally delightful were the discussions on the suggested distinction between offensive and defensive weapons. The sub-commission entrusted with the investigation of this question arrived at a unanimous reply on the basis of a well-justified mutuality and reciprocity of distrust. Accordingly, the only armaments which can merely be used for defensive purposes against sea-borne attacks are shelters, obstacles and permanent works, such as gun platforms, boom defences and fixed installations for observation and for signalling and communications. Similarly limited were the weapons which could, in the opinion of the sub-commission, be used merely for defence against

¹ C.P.D. 28, pp. 11 and 31.

² *ibid.*, p. 62.

³ *ibid.*, p. 149.

⁴ *ibid.*, p. 111.

⁵ *ibid.*, p. 56.

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attacks by land.¹ Conversely, the delegations of a good many countries were imbued with an exceedingly generous dose of optimism and confidence in the good faith of the signatories to a disarmament convention. They were 'firmly of the opinion that any form of supervision or control of armaments by an international body is more calculated to foment ill-will and suspicion between States than to create a spirit of international confidence, which should be one of the more important results of any agreement for the reduction and limitation of armaments. They are furthermore firmly of the opinion that the execution of the provisions of any Convention for the Reduction and Limitation of Armaments must depend upon the good faith of nations scrupulously to carry out their treaty obligations'.²

If Spinoza could have listened to these discussions, or have witnessed the Disarmament Conference, he might have repeated his comment on politics in his own time:³ 'When I have applied my mind to politics so that I might examine what belongs to politics with the same freedom of mind as we use for mathematics, I have taken my best pains not to laugh at the actions of mankind, not to groan over them, not to be angry with them, but to understand them.'

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¹ C.P.D.28, p. 141.

² *ibid.*, p. 167. See, on the more 'realistic' approach of the French and other delegations, their joint declaration, *ibid.*, p. 169.

³ B. de Spinoza's *Samtliche Werke, Abhandlung uber Politik*, Chap. I, paragraph 4, Stuttgart, 1871, Vol. I, p. 423.

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CHAPTER 19

ECONOMIC AND FINANCIAL COLLABORATION

THE emergency caused by the World War led to wartime socialism in the two contending camps, to large-scale planning which could not be limited to the internal economies of the Allied and Central powers. Thus, for a limited period it seemed as if the nation had lost its function as the main unit of economic life and was to be replaced by a vast network of international planning. Yet when the special need which had called for this exceptional effort had gone, and with it the extraordinary circumstances of wartime economics which had simplified matters, the motive power which had made possible this experiment equally vanished.¹ In the words of Sir Arthur Salter, who had acquired a unique insight into this wartime organization in his capacity of Director of Ship Requisitioning and Secretary to the Allied Maritime Transport Executive, 'the conditions of the war, and the imperative need for unity of Allied action in face of a common enemy, created a kind of hothouse in which international co-operation, normally a delicate plant of slow and precarious growth, developed in a few months to a completeness of form and structure which it must otherwise have taken many years to achieve'.²

At the Peace Conference a sharp reaction towards economic and financial demobilization was unmistakable. There were many interests which combined in the demand for a return to *laissez-faire* economics and for the decrease of State intervention in this sphere. These tendencies had already become noticeable when, in the last few months of the World War, the Allied and Associated Powers discussed the scheme of transforming the Allied Maritime Council into a General Economic Council and thus making available for post-war reconstruction, and particularly the supply of food and

¹ Compare Sir Arthur Salter, *Allied Shipping Control*, London, 1921, and H. R. G. Greaves, *The League Committees and World Order*, London, 1931, pp. 21 *et seq.*

² Salter, *l.c.*, pp. 243-4.

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raw materials to Central and Eastern Europe, the formidable machinery used during the war for the supply of the Allies and for the enforcement of the blockade. The plan failed, as the United States were not prepared to agree to any plan which might have disregarded the interests of the American farmers and led to a dictation of prices by the European consumers.¹ In view of the fact that Germany had only asked for an armistice and not for a preliminary peace, even the blockade against the Central Powers was maintained, and Winston Churchill's wise suggestion to send immediately 'a dozen great ships crammed with provisions into Hamburg'² did not evoke a positive response.

All that Wilson had to propose regarding the tremendous problem of the economic reconstruction of the post-war world is summed up in the third of his Fourteen Points: 'The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.' During the drafting of the Covenant, the Belgian, French and Italian delegations made attempts to secure economic and financial competencies for the League of Nations, but their efforts were without success.³ In the text of the Covenant, even the tenet of free trade found its only expression in Article 23, paragraph *e*. Accordingly the members of the League 'subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon' bound themselves to 'make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League'.⁴ The Conference preferred to concentrate upon the erection of the political superstructure of international organization. Yet in a world which no longer regarded the principle of economic *laissez-faire* as an unquestioned axiom, even a liberal system of free trade could have survived over a prolonged period only if at least its premises had been protected by conscious efforts of joint planning against the onslaught of sectional economic and political interests.

¹ Salter, *l.c.*, p. 220. See also Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, pp. 151 *et seq.*, and W. Arnold-Forster, *The Blockade, 1914-1919*, Oxford, 1939.

² *The World Crisis*, London, 1929, pp. 20-1.

³ D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. I, p. 349, and II, pp. 247, 527 and 532.

⁴ See Greaves, *l.c.*, pp. 35 *et seq.*, for clauses of the Covenant which imply the possibility of League action in the economic sphere.

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If more constructive efforts were made in the sphere of Labour, this was due to the fear of communism and the necessity of providing something positive as an antidote to this fundamental challenge.¹ It should be noted that the powers officially admitted an interrelationship, which is often ignored, between international relations and social problems. They went so far as to express the opinion that peace can be established only 'if it is based upon social justice', and put on record that 'conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled, and an improvement of those conditions is urgently required'.² There was an attempt to deal with this problem by the establishment of the International Labour Organization, the work of which, from a standpoint of relativity, compares very favourably with that of the League of Nations. The International Labour Organization has belied the arrogant claim that international relations must remain the private preserve of the Leviathans and their representatives. The Conference and the Governing Body of this autonomous League organization are composed on a tripartite basis. Each member has four representatives, of whom two are government delegates while the other two represent the employers and workers of that country. The members are bound to nominate these non-government delegates 'chosen in agreement with the industrial organizations if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries'.³ This organization was equally successful in another sphere where the League itself has failed, by achieving a remarkable degree of universality.⁴ In the limited field of labour protection the conditions for realizing this object were particularly favourable. No country can fail to take measures against foreign competition which undercut home producers. Very frequently it is the difference in social standards and in the protection accorded to workers by State legislation regarding adequate living wages and a maximum of working hours which makes this undercutting possible. The pressure from labour organizations,

¹ Compare, above, Chap. 13.

² Treaty of Versailles, Part XIII, Section I, Preamble.

³ Treaty of Versailles, Article 389. Compare also C. W. Jenks, 'The Significance for International Law of the Tripartite Character of the International Labour Organization', in *Transactions of the Grotius Society*, London, 1937 (Vol. 22), pp. 45 *et seq.*

⁴ See the present writer's *The League of Nations and World Order*, London, 1936, pp. 124 *et seq.*

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however, in nearly all industrial countries is strong enough to force employers to do their utmost to satisfy the demands of the workers. As 'the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries',¹ the obvious solution appears to be to set up internationally valid minimum standards to secure advantages for labour without running the risks of isolated action. Yet in spite of the valuable work which the International Labour Organization has done, and the many multilateral treaties for the protection of labour which would never have even been considered by national legislative bodies without its initiative, it has always been hampered by the fact that it has not 'any direct legislative power'.² As is indicated by the variations in the number of States which have ratified labour conventions adopted by the General Conference of the International Labour Organization,³ a considerable amount of vain effort and frustration is the price paid for the subjection in each single case of the collective work to final scrutiny and decision on the part of the member States.

While the Covenant was based on the assumption that international economic and financial relations would best be served by leaving them alone, strong forces were at work to bring about a close link between politics and economics. In the first place, the transformation of wartime into peacetime economics could only be carried out by a continuation of State intervention in the economic and financial sphere which had become customary during the war, mostly in belligerent countries, less in neutral States, but which was perceptible everywhere. The return to, as it was hoped, 'normal' life reduced the amount of activity and intervention of the State, compared with war standards, but it remained far above the pre-1914 level. In addition, organization of industry and trade replaced, even in Great Britain, the principle of free competition, and undermined the traditional liberal conceptions. A sentence such as the following, which is to be found in the Report of the Committee on Trusts of 1919, would have been unthinkable before the World War: 'We are satisfied that trade associations and combines are rapidly increasing in this country, and may within no distant period exercise the paramount control in all

¹ Treaty of Versailles, Part XIII, Section I, Preamble.

² The Permanent Court of International Justice in its Advisory Opinion of July 23rd, 1926 (Series B.13, p. 17).

³ Compare the table in Oppenheim-Lauterpacht, *International Law*, London, 1937 (Vol. II), pp. 791 *et seq.*

important branches of British trade.¹ The tendencies towards monopolization from above are essentially not as different, as it may appear at first sight, from the demands for socialism from below. They have in common the desire for a planned economy and for State support in those attempts. That they differ in their views regarding the wisest forms of distribution is a minor matter from this point of view. In the words of a Swiss banker, 'the big business man of to-day stands much nearer to socialism than to the middle class, not excluding his shareholders'.² Second, the economic crises and trade cycles, whatever their real explanation may be, have led to increasingly urgent demands for protection by the State against this evil, and have led to measures all over the world incompatible with the maintenance of free trade. Restrictions to a varying extent were imposed on the free movement of goods, capital and men. Protectionist tariffs, import quotas, exchange control and limitation of immigration are the replies of frightened governments and nations to the challenges of an otherwise apparently overwhelming world economic system.³ While the theoretical superiority of the specialization which can only be achieved in a system of free trade, and of the advantages to be derived from such a state of affairs are willingly admitted,⁴ and public speakers exalt the desirability of the return to the lost paradise, in practice responsible Statesmen and public opinion prefer the luxury of closed economies and of lower standards of living for the masses.⁵ Third, the increase in nationalism all over the world makes former colonies and new States aware of the fact that their political independence is merely chimeric if it is not based on economic independence. The report by Sir Thomas Ainscough on 'Conditions and Prospects of United Kingdom Trade in India' is symptomatic: 'One of the first actions of the new autonomous Provincial Governments was to lay down that purchases by all officers under their control should be made in India if practicable. This policy deals a heavy blow at the overseas contractor who has been accustomed to tender on equal terms with all competitors. Even in the case of capital goods a determined effort is being made by Indian political leaders and politically

¹ April 24th, 1919. Cmd. 9,236, p. 11. See also F. E. Lawley, *Collective Economy*, London, 1938, and Émile Girard, *La Crise de la démocratie et le renforcement du pouvoir exécutif*, Paris, 1938.

² F. Somary, *Wandlungen der Weltwirtschaft seit dem Kriege*, Tübingen, 1929, p. 152.

³ Compare for details P. T. Ellsworth, *International Economics*, New York, 1938, pp. 275 *et seq.*

⁴ A. G. B. Fisher, *Economic Self-Sufficiency*, Oxford, 1939.

⁵ See J. M. Keynes, 'National Self-Sufficiency', *Yale Review*, 1933.

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minded industrialists, imbued with the spirit of economic nationalism in its most extreme form, to render the country so far as possible independent of imports of such items as motor vehicles, many types of machinery, electrical plant and accessories, heavy chemicals and fertilizers, bicycles and sewing machines'.¹

Rationally, it can be shown that the objective of economic self-sufficiency is unattainable even for Greater powers, with the possible exception of the United States of America and the U.S.S.R., and even in those most favourable cases, there remain some uncomfortable gaps which could, however, probably be closed by substitutes and the accumulation of big reserves.² Yet these arguments are as little decisive as the suggestion to a smaller State that it might just as well totally disarm as it has no chance anyway against a vastly superior and aggressive neighbour. This comparison leads to the essential and fourth point. In an international society in which the rule of force is supreme, economics are a function of power politics. Therefore it would be fatal, from the standpoint of any government, to allow a development of industry and finance which runs counter to the paramount interest of national preparedness. It may be that a wealthy State can afford in peacetime the luxury of a certain amount of welfare economics, but in the long run power politics demand power economics. While this simple truth has not been at all times equally obvious 'economic strength has always been an instrument of political power'.³ Though a weak State cannot hope to match the economic system of a powerful State, the fact that it has within its territory, in good strategical positions, armaments and aircraft factories may enable it to hold out until outside help arrives. Thus the whole conception and ideal of economic welfare is overshadowed in a system of power politics by the permanent threat of war, and the equally constant problem of national defence.⁴ If anything, then the principle of economic sanctions, and its application in the Italo-Abyssinian War, has made the world conscious of the inter-relationship between economics and politics, just as this lesson has been driven home to the Germany of the post-1919 period by the effectiveness of the Allied blockade. The more the political system of Geneva broke

¹ Department of Oversea Trade, No. 718, London, 1939, pp. 24-9. See also M. Bonn, *The Crumbling of Empire*, London, 1938.

² See H. R. G. Greaves, *Raw Materials and International Control*, London, 1936; Eugene Staley, *Raw Materials in Peace and War*, New York, 1937.

³ E. H. Carr, *The Twenty Years' Crisis*, London, 1939, p. 145.

⁴ Compare Eugene Staley, *World Economy in Transition*, New York, 1939, and Peter Drucker, *The End of Economic Man*, London, 1939.

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to pieces, the more the possibilities of world-wide economic and financial collaboration receded into the background. Yet again, nothing provides better food for thought than the examination of frustrated attempts and the analysis of the reasons of partial successes and failures. Therefore, a few examples may help to illustrate the limitations of economic and financial co-operation within the framework of a system of power politics.

The reparations question offers a case in point. Though it is the undoubted right of the victor to make the losing side pay for the costs of the war, such an attitude in itself is hardly conducive to the establishment of a community system which is supposed to end war once and for all. An examination of the reparations demands as laid down in the Peace Treaties shows that the obligations of the former Central powers were limited more narrowly to specific categories of damage incurred by the Allies through the war. Yet even so, these claims by far surpassed Germany's capacity to pay and this correlation did not affect the computation of these items at the Peace Conference.¹ Thus the alternative existed either of insisting on merely hypothetical claims, knowing that they could not be fulfilled, or of reducing the demands to figures compatible with the debtor's resources. The former line was taken by French policy, while Great Britain and financial experts here and in the United States strongly advocated the latter course. It was only after the failure of the invasion of the Ruhr that the Anglo-Saxon view prevailed. The report of the Dawes Committee opened with the following words: 'We have approached our task as business men anxious to obtain effective results. We have been concerned with the technical, and not the political, aspects of the problem presented to us.'² Anyone who tried to find a common-sense solution realized that German payments could be effected only by the export of gold, goods or services. In view of the obvious limitations of the export of gold from a country which is not gold-producing, the possibility of the fulfilment of Germany's obligations depended on the willingness of the world to accept either German services or exports. As it soon became evident, the creditors were not prepared to increase their own unemployment and to limit their own exports in order to make it possible for Germany to discharge her obligations. Thus the Dawes and Young Plans only worked as long

¹ Compare J. M. Keynes, *The Economic Consequences of the Peace*, London, 1919, and *A Revision of the Treaty*, New York, 1922. See also Sir Andrew McFadyen, *Reparation Reviewed*, London, 1930.

² Cmd. 2105, London, 1924, pp. 406 *et seq.*

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as the American credits to Germany enabled her to repay her creditors in this rather fictitious manner.¹ At this stage, reparations could no more be used to a considerable extent as indirect means of political pressure, nor did they serve the purpose of repairing the damage suffered by the Allied and Associated Powers, yet they contributed effectively to a permanent poisoning of the relations between the powers concerned, and, together with Germany's unilateral disarmament, they provided invaluable ammunition for the parties bent on the overthrow of the German Republic from within. In fairness to the experts responsible for the Young Plan it might be recalled that they indicated a constructive way out of the impasse. Their report contains the suggestion of making use of the Bank for International Settlements, created under The Hague Agreements of 1930, for the purpose of increasing German exports in a manner not detrimental to the creditor countries: 'In so far as the task of transferring the payments into foreign currencies involved, besides a restriction of imports, an extension of German export trade, we envisaged the possibility of a financial institution that should be prepared to promote the increase of world trade by financing projects, particularly in undeveloped countries, which might otherwise not be attempted through the ordinary existing channels.'² As, however, the general functions of the Bank for International Settlements were interpreted restrictively by its Board of Directors, no serious attempt was ever made to put this part of the Young Plan into operation.³ Thus a unique opportunity of creating positive values and a community spirit by large-scale public works on an international basis was wasted. When the Conference of Lausanne in 1932 buried, for all practical purposes, the reparations problem, this decision came too late to have any salutary effect. Furthermore, it came not as the result of mutual understanding, but had to be made in answer to a defiant *non possumus* on the part of Germany, then already under the shadow of the swastika.

Equally instructive is the case of the international financial assistance granted to Austria. The disruption of the Austrian-Hungarian Monarchy presented particular problems for a country like Austria

¹ Compare the reports of the Committee of Experts appointed on the recommendation of the London Conference, 1931, in *The Economist*, August 22nd, 1931, Special Supplement, and Cmd 3947, London, 1931.

² *Report of the Committee of Experts on Reparations*, London, 1929 (Cmd. 3343), p. 9. See also H. Schacht, *Das Ende der Reparationen*, Oldenburg, 1931, p. 206.

³ Compare the present writer's *Die Internationalen Banken für Zahlungsausgleich und Agrarkredite*, Berlin, 1932, pp. 25 *et seq.*

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with one-third of its population concentrated in Vienna, and, in order to keep in check the movement for union with Germany, the non-territorial provisions of the Treaty of St. Germain were not seriously enforced by the Allies. The Austrian Reparations Commission 'transformed itself into a relief organization',¹ and in the course of the next few years, under the auspices of the League of Nations, Austria's financial reconstruction was undertaken on the basis of an international loan. The price which Austria had to pay was an extension of her obligation under the Treaty of St. Germain regarding the maintenance of her independence.² Austria, in the Protocol of October 4th, 1922, undertook to 'abstain from any negotiations or from any economic or financial engagement calculated directly or indirectly to compromise this independence'.³ When, in accordance with the recommendations for the conclusion of regional economic agreements⁴ made by League members at the League Assembly of 1930, Germany and Austria announced on March 21st, 1931, the conclusion of a customs union between the two countries the interplay between politics and economics was uncomfortably brought home to both countries. The breakdown of the *Kredit-Anstalt*, the refusal of the Bank of France to assist the Bank of England in its support of the Austrian State Bank and large-scale withdrawals of short-term credits by foreign creditors from the *Reichsbank* forced Germany and Austria to give up this limited project.⁵

During the false dawn of the Locarno Agreements, the League members embarked on the venture of the first World Economic Conference. This Conference was initiated by a resolution of the League Assembly which was 'firmly resolved to seek all possible means of establishing peace throughout the world, convinced that economic peace will largely contribute to security among the nations, persuaded of the necessity of investigating the economic difficulties which stand in the way of the revival of general prosperity, and of ascertaining the best means of overcoming these difficulties and of preventing

¹ E. H. Carr, *International Relations since the Peace Treaties*, London, 1937, pp. 10 and 62 *et seq.*

² Article 88.

³ See for the interpretation of this clause by the Permanent Court of International Justice the Advisory Opinion on the German-Austrian Customs Union, September 5th, 1931, Series A/B.41, p. 47.

⁴ See the speeches made by the delegates of Poland, Rumania and Norway in the Eleventh League Assembly, 1930, *Records of the Plenary Meetings*, p. 111, and of the Second Commission, p. 27.

⁵ Compare Carr, *l.c.*, pp. 136 *et seq.*

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disputes'.¹ The recommendations of the Conference were modelled on the traditional pattern of economic liberalism, 'return to the effective liberty of international trading'² and reduction of tariff barriers,³ suggestions which, as it is modestly put in the report of the Conference, 'are not entirely new'.⁴ Political practice, however, moved on the road of economic nationalism, and by the time the second World Economic Conference met in London in 1933, the gold standard, another major assumption of liberal trade policy, had broken down.⁵ President Roosevelt underlined the importance of an international stabilization of currencies in a statement in which he expressed the wish that the World Economic Conference 'must establish order in place of the present chaos by a stabilization of currencies'.⁶ Cordell Hull took up the same theme in his speech during the general discussion of the Conference and pointed out 'that the distressed peoples in every land expected concord, co-operation and constructive results from the Conference; the failure of the Conference would mean the success or failure of statesmanship throughout the world'.⁷ When at last an agreement was in sight,⁸ President Roosevelt disavowed his own delegation and made it clear 'that he saw no utility at the present time in temporary stabilization between the currencies of countries whose needs and policies are not necessarily the same. Such stabilization would be artificial and unreal and might hamper individual countries in realizing policies essential to their domestic problems'.⁹ Thus, he offered a model example for the thesis that, in a world in which the sovereign nation State is supreme, 'the common interest' has to give way to short-range disharmonies in national interests and to 'economic nationalism', to put the contrast in the words used by Cordell Hull in one of his speeches during this Conference.¹⁰ After this disappointment the Conference faded away. Needless to say, Litvinov again used the golden opportunity of such a world forum to propose another scheme, this time a draft pact of economic non-aggression,¹¹ but, having found sympathy only with the delegations of the Irish Free State, Poland and Turkey, it was relegated to one of the Conference's

¹ *Report and Proceedings of the World Economic Conference, 1927* (C.E.I. 46), Vol. I, p. 3.

² *ibid.*, p. 34.

³ *ibid.*, p. 39.

⁴ *ibid.*, p. 48.

⁵ Compare Carr, *l.c.*, pp. 133 *et seq.*

⁶ U.S. State Department, *Press Releases*, May 20th, 1933.

⁷ League of Nations, *Journal of the Monetary and Economic Conference*, London, June 15th, 1933, p. 26.

⁸ *ibid.*, June 21st, 1933, p. 66.

⁹ *ibid.*, July 8th, 1933, p. 160.

¹⁰ *ibid.*, June 23rd, 1933, p. 86.

¹¹ Compare E. Korovine, '*Les Pactes de non-agression économique et la préservation de la paix*', in *The New Commonwealth Quarterly*, 1935 (Vol. I), pp. 203 *et seq.*

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sub-committees. In the words of the delegate of the U.S.S.R., a country to which 'the ideas of economic nationalism were absolutely foreign', 'the whole work of the Conference, all the work of its numerous commissions and sub-commissions during the past six weeks had been deeply permeated by one fundamental mood, one aspiration: adjournment'.¹

Another attempt to lessen international friction by economic understanding was made on the initiative of Sir Samuel Hoare. In his speech in the League Assembly of 1935, he drew attention to economic aspects of peaceful change which must, of necessity, supplement a system of collective security: 'It is the fear of monopoly – of the withholding of essential materials – that is causing alarm. It is the desire for a guarantee that the distribution of raw materials will not be unfairly impeded that is stimulating the demand for further inquiry. So far as His Majesty's Government in the United Kingdom is concerned, we should, I feel sure, be ready to take our share in an investigation into these matters.'² A plan of this kind was fair and feasible within a comprehensive collective system. Outside its realm, in peacetime, the problem does not exist. The over-production of raw materials is such that no country has difficulties in obtaining the necessary supplies. If currency problems exist, they are invariably connected, as has been the case with the Third Empire, with the re-armament policy of the countries concerned.³ It would mean straining the principle of international co-operation beyond the point of seriousness to expect the world to assist a country in needs of this sort. 'This country cannot be expected to render help to others whether in the economic or in the financial sphere if the only result of such action is to be a further piling up of armaments and a consequent further stress and strain upon the fabric of world peace.'⁴ As any country must suspect that its raw materials will furnish potential enemies with war materials, political and military considerations cannot be banned from the superficially, merely economic issues of international trade. If fairness and equity are to be the standards of international economic and financial relations, those principles must either be realized simultaneously in the political sphere too or power

¹ M. Maisky, in *The New Commonwealth Quarterly*, 1935 (Vol. I), p. 237.

² Sixteenth League Assembly, Third Plenary Meeting, September 11th, 1935, pp. 6-7.

³ Compare, above, Chap. 6, and L. von Mises, 'Der Völkerbund und das Rohstoffproblem', in *The New Commonwealth Quarterly*, 1937 (Vol. III), pp. 15 *et seq.*

⁴ Anthony Eden in his speech at Bradford, December 14th, 1936, in *The Times*, December 15th, 1936. See also H. Kranold, *The International Distribution of Raw Materials*, London, 1938.

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politics will produce power economics.¹ It may very well be that 'the economic growth of the world has outstripped the growth of political and social institutions, and unless economic activities and rivalries are controlled in the interests of the peoples of the world, stable peace will be impossible'.² This, however, means that either political and social institutions must be adapted to the alleged economic unity of the world or a retrograde process in the economic sphere is unavoidable. While an international community may aspire to realize the ideals of welfare economics, this conception must remain a luxury in an international system of power politics. Again, it becomes obvious that the post-1919 world had only the choice between a big step forward and a big step backward. To stop in mid-air, as the League members attempted to do, was not very dignified and utterly ineffective.

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¹ See for another abortive effort the van Zeeland Report (London, 1938, Cmd. 5648) and Paul van Zeeland, *Economics or Politics?*, Cambridge, 1939.

² Memorandum adopted by the General Council of the British Trade Union Congress, the National Executive Committee of the Labour Party and the Executive Committee of the Parliamentary Labour Party, submitted to the World Economic Conference, 1927, *C.C.E.I.*, 46, p. 231.

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CHAPTER 20

OTHER PALLIATIVES

THE history of the Briand-Kellogg Pact gives insight into a most fascinating mixture of motives responsible for the political stage-craft of the post-1919 period. Following a statement by Briand, significantly made on the occasion of the tenth anniversary of the entry of the United States into the World War, in June, 1917,¹ the French Government suggested to the United States of America a pact providing for the renunciation of war as an instrument of 'their national policy towards each other'.² In the following Article it was stipulated that 'the settlement or the solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means'. While it was not very likely that either France or the United States would attack each other, the first World War had taught the European powers how fatal it might be if in any war between European States the neutrality rights of the United States of America were violated and that country joined the other side. Whatever high motives may have inspired Briand in making his suggestion,³ the acceptance of the treaty in that form would have meant, for all practical purposes, that the United States of America would have lost its freedom of action to resort to war against France, but not against any power with whom she did not conclude a corresponding agreement. The United States of America withheld their reply for nearly half a year and in their note made a counter-proposal which avoided the possible implications of Briand's original draft. The U.S. Secretary of State suggested that the two countries 'might make a more signal contribution to world peace by joining in an effort to obtain the adherence of all principal powers of the world' to this agreement.⁴ While the Quai d'Orsay could not

¹ Text in James T. Shotwell, *War as an Instrument of National Policy*, London, 1929, p. 39.

² Text in Karl Strupp, *Der Kellogg-Pakt im Rahmen des Kriegsvorbeugungsrechts*, Leipzig, 1928, p. 25.

³ Compare Shotwell, *l.c.*, pp. 111 *et seq.*

⁴ U.S. Note of December 28th, 1927, in Strupp, *l.c.*, p. 27.

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refuse this idea outright, it was suggested by return of post that 'it would be advantageous immediately to sanction the general character of this procedure by affixing the signatures of France and the United States'.¹ The States Department politely refused to comply with this attempt at reducing the other powers of the world to mere accessories to a treaty which was no longer under discussion,² and an interesting correspondence followed in which the French Government tried to limit the original draft to wars of aggression, in view of its obligations under the Covenant and the Locarno Agreements.³ Taking Briand's draft at its face value and assuming an equal amount of good faith on the part of all signatories, which would reduce aggressive and defensive wars to mere hypothetical possibilities, Kellogg, in his note of February 27th, 1928, permitted himself two sentences which do not wholly deny the assertion made by a distinguished American teacher of international law that there is a considerable amount of 'shrewdness and cynicism in the American make-up'.⁴ The Secretary of State expressed his reluctance to believe 'that the provisions of the Covenant of the League of Nations really stand in the way of co-operation of the United States and members of the League of Nations in a common effort to abolish the institution of war'. Furthermore, he ventured to hope 'that neither France nor any other member of the League of Nations will finally decide that an unequivocal and unqualified renunciation of war as an instrument of national policy either violates the specific obligations imposed by the Covenant or conflicts with the fundamental idea and purpose of the League of Nations'.⁵ Whereas the governments conducted their diplomatic negotiations, regarding the abolition of war as an institution with considerable detachment and by important reservations limited their adherences in advance, public opinion, particularly in the United States, was seized by a crusading spirit for the outlawry of war. Following the lead given by Dr. Butler of the Carnegie Endowment,⁶ women's organizations particularly demanded the ratification of the Pact and when Congress was about to meet in December, 1928, about 600 letters, urging the administration to act, were received daily at the Department of State, and the White House itself was subjected to a similar paper

¹ French note of January 5th, 1929, *ibid.*, p. 29.

² *ibid.*, p. 30.

³ *ibid.*, pp. 28 *et seq.*

⁴ Philip G. Jessup, *The United States and the Stabilization of Peace*, New York, 1935, p. 411.

⁵ Strupp, *l.c.*, pp. 36-7.

⁶ See Shotwell, *l.c.*, pp. 41 *et seq.*

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storm.¹ On August 27th, 1928, the Pact of Paris for the Renunciation of War was solemnly signed. Within a short period the system of the Briand-Kellogg Pact achieved universality, all countries of the world, with insignificant exceptions, having accepted its obligations.² These can be summarized shortly as the renunciation of war as an instrument of national policy, and a complementary duty not to seek the solution or settlement of disputes or conflicts 'of whatever nature or of whatever origin they may be'³ by other than pacific means. Yet war still remains lawful in a number of cases. In the first place, as has been made abundantly clear by the Secretary of State, the Pact does not impair in any way the right of self-defence. 'That right is inherent in every sovereign State and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions, to defend its territory from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defence.'⁴ Second, there are all those instances in which States allege that they resort to war as an instrument of international policy, i.e. for the enforcement of the Covenant or regional agreements, such as the Locarno Treaties. Third, wars between signatories and non-signatories of the Pact are compatible with it, and, fourth, wars against a signatory who has waged war in violation of the Pact. Fifth, the regions covered by what has been called the British Monroe Doctrine have been excluded from the Pact. As it is put in the British note of May 19th, 1928, 'there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence'.⁵

The apparent simplicity of the scheme appealed equally to public opinion and to the Statesmen concerned. The man in the street felt that now at last, by one sweeping step, war had been abolished. Foreign offices were in the rare position of being able to cash in on this popular demand without having to undertake any rigid

¹ *The New York Times*, December 8th, 1928.

² Compare *The British Yearbook of International Law*, London, 1934, p. 139.

³ Article 2.

⁴ U.S. Note to the German Foreign Minister, Berlin, June 23rd, 1928, in Strupp, *l.c.*, p. 61.

⁵ *ibid.*, p. 51. See also the British note of July 18th, 1928, *ibid.*, p. 77, and J. L. Brierly, 'Some Implications of the Pact of Paris', in *The British Yearbook of International Law*, London, 1929, p. 209.

obligation. Compared with the Covenant, everything was so perfectly straightforward. Why any provision for sanctions? One had only to trust in one another's good faith and everything would turn out well. Yet the outlawry of war could not in itself create the agencies which were to fulfil in future the functions formerly left to war. If the signatories of the Pact of Paris were really convinced, as it is said in the Preamble, 'that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process', then they had to create procedure of this kind.¹ For, to assume that, in deference to a treaty signature, States would agree over a prolonged period to leave serious conflicts unsettled if the other side did not agree to an equitable settlement, was, to say the least, unrealistic.² Therefore, it seems to follow that a constructive solution of the problem of peaceful change is an implied condition of this Pact. To turn to other aspects of this proposition, who decides whether a country has violated its obligations under the Pact or has resorted to war merely in self-defence? Was it China or the U.S.S.R. who was the offender in their armed conflict of 1929?³ If, as in the case of the Japanese invasion of Manchukuo, hardly any doubt exists regarding the identity of the Pact-breaker, how is the observance of the Kellogg Pact to be enforced?⁴ Is the fact that the aggressor resorts to war without a formal declaration of war, a circumstance which rules out any infraction of this Treaty?⁵ Is the only consolation which signatories can derive from this universal agreement, in case of its violation, that the perpetrator of such act 'should be denied the benefits furnished by this Treaty'?⁶ If so, the agreement is not worth the ink with which it was written, not to mention the golden pen which was used by the signatories.⁷ If, however, as it is suggested by the Budapest Articles of Interpretation adopted at the Budapest Meeting of the International Law

¹ Compare the present writer's *William Ladd: An Examination of an American Proposal for an International Equity Tribunal*, London, 1935, pp. 38 *et seq.*

² Compare as to the sacredness of treaty obligations in all circumstances, Neville Chamberlain's speech in the House of Commons, December 14th, 1932, *Hansard*, 5th series, Vol. 273, col. 354.

³ See Russell M. Cooper, *American Consultation in World Affairs*, New York, 1934, pp. 86 *et seq.*

⁴ *ibid.*, pp. 192 *et seq.*

⁵ See Oppenheim-Lauterpacht, *International Law*, London, 1935, Vol. II, pp. 155 *et seq.*

⁶ *ibid.*, pp. 160 *et seq.*

⁷ See, on the ceremonies arranged in connection with the signature, Shotwell, *l.c.*, pp. 170 *et seq.*

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Association,¹ the other signatories may give economic, financial or military assistance to the State attacked, in what, then, does the improvement consist compared with the system of the Covenant? States can be expected to make use of these permissive sanctions only to the extent to which their national interests make this advisable, and they have done so in the past quite effectively without the moral support of this caricature of a collective system. It may be objected that it was already a great achievement that States all over the world agreed to outlaw war as an institution: 'War as a means of arbitrary and selfish action, is no longer to be deemed lawful. No longer will its threat hang over the economic, political and social life of peoples. Henceforth the smaller nations will enjoy full independence in international discussions.'² Does not, however, the damage done by an agreement which is honoured more by its breach than by its observance and which has become the world's laughing stock, much more impair the cause of an international community than the frank admission that power politics cannot be tamed by paper palliatives?

In the Chaco War between Bolivia and Paraguay, which began with the battle of Fort Vanguardia on December 5th, 1928, the signatories to the Kellogg Pact could take the line that they were not involved as such, in view of the fact that Bolivia was not a signatory to the Pact.³ China and the U.S.S.R. in the end settled their dispute arising out of the Czarist inheritance of the Chinese Eastern Railway by direct negotiations,⁴ though the appeal made by the United States of America and thirty-seven other signatories of the Kellogg Pact, at least to a certain extent, confirmed Secretary Stimson's assertion that 'the public opinion of the world is a live factor which can be promptly mobilized and which has become a factor of prime importance in the solution of the problems and controversies which may arise between nations'.⁵

The Japanese attack of 1931 on Mukden soon put the system of the Kellogg Pact and the Covenant to a test from which neither recovered. In the course of that war, Stimson tried out another

¹ Compare Sir John Fischer Williams, 'Recent Interpretations of the Briand-Kellogg Pact', in *International Affairs*, 1935 (Vol. XIV), pp. 346 *et seq.*, and the text of the 'Budapest Articles of Interpretation', *ibid.*, p. 354.

² Aristide Briand at the signature of the Pact of Paris. The full text is quoted in Shotwell, *l.c.*, pp. 17 *et seq.*

³ Compare, on the efforts made for a settlement, Cooper, *l.c.*, pp. 111 *et seq.*, and the present writer's *The League of Nations and World Order*, London, 1936, pp. 142 *et seq.*

⁴ See Cooper, *l.c.*, pp. 86 *et seq.*

⁵ U.S. Department of State, *Press Release*, December 4th, 1929, p. 88.

short cut to international order, the principle of non-recognition. If the world was not ripe for the elimination of conflicts by preventive measures and not willing to enforce the maintenance of solemnly signed pledges by the application of economic and military sanctions, the same result might be achieved by passive resistance. Suggestions of this kind had been adopted in 1890 at the International American Conference in Washington, a Brazilian proposal to this effect was submitted to the Hague Peace Conference of 1907,¹ and, in 1915, Secretary Brian sent such a notification to China and Japan in connection with the latter's Twenty-one Demands.² Now, both the United States³ and the members of the League of Nations expressed their resolution 'not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris'.⁴ Within a fully developed legal system this principle, which is implied in Article 10 of the Covenant,⁵ is perfectly sound and, it can even be maintained, self-evident. This principle has been formulated by an English court as follows: 'It is clear that the law is that no person can obtain, or enforce, any rights resulting to him from his own crime; neither can his representative, claiming under him, obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence.'⁶ In the international sphere, however, this diplomatic sanction, if it remains unsupported by more vigorous action, tends, after a transitory period, to become a mere fiction.⁷ States pretend not to recognize in law a situation which they may, as it is suggested,⁸ recognize *de facto* and without thus impairing 'the normal course of international relations'.⁹

During a period in which States fell victims to a disease which may be described as pactomania, States which could apparently not be entirely relied on to carry out their obligations under the Kellogg Pact were supposed to be more deeply impressed by the signature

¹ Compare *The American Journal of International Law*, 1939 (Vol. 33), Supplement Section, pp. 890 *et seq*.

² Henry L. Stimson, *The Far Eastern Crisis*, New York, 1936, p. 93.

³ Stimson's note of January 7th, 1932, only refers to the Pact of Paris. See Jessup, *l.c.*, pp. 44 *et seq*.

⁴ League of Nations, *Official Journal*, Special Supplement, No. 101, pp. 87-8.

⁵ Compare, above, Chap. 17.

⁶ In the Estate of *Cumgunda (otherwise Cora) Crippen* deceased, (1911) P. 108, 112.

⁷ See H. A. Smith's letter to the Editor of *The Times*, November 8th, 1934.

⁸ H. Lauterpacht, 'Règles générales du droit de la paix', in *Recueil des Cours de l'Académie de Droit International*, Paris, 1938 (tome 62), pp. 295-6.

⁹ *Ibid.*, p. 295.

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of non-aggression treaties. This method was particularly favoured by Litvinov, who busied himself collecting signatures for treaties of this kind in order to derive some profit from his stay at the World Economic Conference. He developed the search for adequate definitions of the aggressor to a fine art, knowledge of which may still be of at least academic interest. Again, the conception of an aggressor and the exact definition is helpful within the framework of a comprehensive collective system; for the clearer it is in just what circumstances sanctions are to be applied, and the less the decision on this matter is a question of controversy and discretion, the more smoothly the system works. While in a system of power politics the distinction between aggressive and defensive wars is only of propagandist relevance, and the naturalist distinction between just and unjust wars was bound to degenerate into a meaningless ideology, the difference is essential in an international community which seriously attempts to limit resort to war to exceptional cases, or to abolish it completely. The Treaty of Versailles, in its reference to the war imposed upon the Allied and Associated Powers 'by the aggression of Germany and her allies'¹ gives expression to a change in international morality. Impressed by the enormous sacrifices of the first World War, public opinion in all countries inquired into the causes of the war and the responsibility for its outbreak. Although it may retrospectively be contested whether it is just to make individuals responsible for behaviour which is not uncommon in a system of power politics including the violation of the rights of neutrality, such *ex post* valuations are a common feature of any revolution and this transformation of public opinion may very well be compared with a revolutionary change of values. The solution of the war guilt problem chosen by the fathers of the Treaty of Versailles is open to attack on other grounds. If it had really been the intention of the Allied Powers to investigate the real causes of the war, the appropriate method was certainly not for one side to be judge in its own cause and to force the vanquished party to admit its guilt in a treaty enforced upon it.² The Covenant refers directly to aggression only in one of its articles³ and stipulates in a rather detached manner, the conditions on which the application of sanctions depends.⁴ In the Draft Treaty of Mutual Assistance

¹ Article 231.

² See, for a well-balanced discussion of this question, G. P. Gooch, *Before the War*, London, 1938, Vol. II, pp. v and 206 *et seq.*

³ Article 10, paragraph 1.

⁴ Article 16, paragraph 1.

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aggression consists in declaration of war, invasion of another State with or without a declaration of war, attack on another State by land, naval or air forces with or without a declaration of war, naval blockade of the coasts or parts of another State or support to armed bands which have invaded the territory of another State despite the appeal of that State that such support be withdrawn.¹

In all these cases and in the numerous bilateral non-aggression treaties concluded between various powers² an insuperable dilemma exists. Even the most precise definition is not sufficient if the parties are not prepared to submit to an investigation by an independent organ their probably contradictory allegations regarding the first aggressive move. Assuming that they are to permit such a report to be prepared, they must be equally willing to accept it as binding, and to act in accordance with the findings of such a commission or tribunal. Therefore, either the whole machinery of an embryonic collective system is implied in the conclusion of a non-aggression treaty, or such a treaty is worth as much as the Kellogg Pact, which, incidentally, must have been violated first, in any case of a flagrant aggression, before the non-aggression treaty could come into operation. In order to assess the value of these agreements properly, it is sufficient to mention that Nazi Germany had concluded treaties of this type with Poland and Denmark, and the U.S.S.R. was bound by treaties with Poland and Finland 'to refrain from any act of aggression'³ against those countries.

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¹ Compare, for a survey and analysis from an at that time hostile Nazi point of view, Walter Wache, *System der Pakte*, Berlin, 1938, pp. 104 *et seq.*

² See for a list *The American Journal of International Law*, 1939 (Vol. 33), Supplement Section, pp. 867 *et seq.*

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CHAPTER 21

INTERNATIONAL PROTECTION OF MINORITIES AND THE PRINCIPLE OF NATIONAL SELF- DETERMINATION

NATIONALISM in a system of power politics is both an integrating and a disruptive force. If a sovereign State is composed of a self-conscious nation, this combination is bound to increase its cohesion and momentum. In the terminology of Leibniz, it becomes an indivisible and impenetrable *monad*.¹ From the standpoint of a multi-national State, the valuation will be influenced by its capacity to create a loyalty beyond the compass of its various nations, as in the United States of America. If a composite State is not likely to succeed in either, it is understandable that it views the principle of nationalism with dismay. One has to interpret in this light the uncompromisingly negative attitude that is expressed in an Austrian circular of 1858 addressed to Austrian representatives at foreign courts: 'The pretension of forming new States, according to the limits of nationalism, is the most dangerous of all utopian schemes. To put forward such a pretension is to break with history; and to seek to carry it into execution in any part of Europe is to shake to its foundations the firmly organized order of States, and to threaten the continent with subversion and chaos.'² As in the case of any other principle which conflicts with power politics, it is either strong enough to limit it or it becomes itself subservient to it. Thus the fate of minorities is usually less dependent on their own strength than on the interest taken in them by other powers, who may be influenced by the desire to improve the lot of such a group with which they are connected by religious or national ties. Motives of this sort have certainly influenced, at least to a certain extent, the collective interventions of the European States in favour of

¹ G. W. Leibniz, *The Monadology and Other Writings*, Oxford, 1925.

² *Digest of the Diplomatic Correspondence of the European States, 1856-1871*, Berlin, 1932, Vol. I, p. 87.

the Christian subjects within the Ottoman Empire.¹ It may equally happen that minorities form a most convenient lever against other States in order to provide an excuse for an expansion desired on strategical and economic grounds and in order to disrupt from within the country against which this principle is applied. Hitler's technique, as applied against Czechoslovakia, Poland, the Netherlands and other countries, is evidence of the possibilities inherent in this weapon.² Or it may be that a programme of this sort aims at the winning of the goodwill of influential minorities in neutral countries. The Balfour Declaration may be mentioned as an instance. In the words of Winston Churchill: 'it was considered that the support which the Jews could give us all over the world, and particularly in the United States of America and also in Vienna, would be a definite palpable advantage'.³

To the extent to which international protection of minorities exists in the modern international society, it developed from two different sources. In the Treaty of Augsburg (1555), the Catholic and Protestant parties solved the problem of their co-existence within the Holy Roman Empire on the basis of the principle of *cuius regio, eius religio*.⁴ While this rule could be applied without undue difficulties in more or less uniform States where it only meant the emigration of rather small minorities, a different principle was agreed upon for the Free Cities. There the two confessions were to live 'quietly and peacefully' together.⁵ The Treaty of Westphalia of 1648 confirmed the *Reichsabschied* of 1555. Another source of equal importance is the capitulation treaties concluded since the sixteenth century with *pays hors chrétienté*.⁶ These treaties had their origin in voluntary grants made by the Sultans, according to which the consuls of the Christian States were allowed to exercise jurisdiction over their own nationals within the Ottoman Empire. Gradually,

¹ Compare *The Cambridge History of British Foreign Policy*, Cambridge, 1923, Vols. II and III, L. Wolf, *Notes on the Diplomatic History of the Jewish Question*, London, 1919, and Georg H. J. Erler, *Das Recht der nationalen Minderheiten*, Münster, 1931, pp. 77 *et seq.*

² See the various contributions on 'The Munich Settlement and After', in *The New Commonwealth Quarterly*, 1938 (Vol. IV), pp. 237 *et seq.*

³ Debate on Palestine in the House of Commons, July 4th, 1922, *Hansard*, 5th Series, Vol. 156, col. 329. See also the present writer's *Das Völkerbunds-Mandat für Palästina*, Stuttgart, 1929, pp. 21 *et seq.*

⁴ Paragraph 24.

⁵ Paragraph 27. See also Jaques Fouques-Duparc, *La Protection des minorités de race, de langue et de religion*, Paris, 1922.

⁶ See Sir Geoffrey Butler and Simon Maccoby, *The Development of International Law*, London, 1928, pp. 508 *et seq.*, and T. Grentrop, *Die Missionsfreiheit nach den Bestimmungen des geltenden Völkerrechts*, Berlin, 1928.

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they were extended to other Oriental and to Far Eastern States until the rising nationalist movements in those countries forced their general abolition in the post-1919 period.¹ Since the seventeenth century, treaties on commerce and navigation increasingly often contain clauses in favour of the religious freedom of nationals living abroad, and similar articles were incorporated into peace treaties for the protection of populations of ceded territories.² More and more, the principle of religious tolerance was so much taken for granted by most European States that it was no longer thought necessary to stipulate expressly for its maintenance in treaties amongst these countries. Only in exceptional circumstances, as in the case of the newly established Balkan countries, international guarantees were regarded as indispensable against discrimination by overbearing majorities against their religious and racial minorities.³ When, in the course of the nineteenth century, religious conflicts were overshadowed by those between nationality groups, which in the Balkans were to a great extent co-extensive with the different religious communities, imperceptibly the protection of religious minorities developed into a more comprehensive system of protection of religious, racial and national minorities.⁴ Yet the Final Act of the Conference of Vienna, 1815, had already contained a settlement of the Polish question which amounted to a recognition of the principle of national minorities. On the suggestion of Lord Castlereagh, the maintenance of the division of Poland was coupled with a declaration that the Polish subjects of Austria, Prussia and Russia would receive representation and national institutions, though the ways of implementing this decision were left to the complete discretion of the three powers concerned.⁵

The recognition of the nation as a living organism and the alliance between nationalism and liberalism, two movements which grew to full strength in the course of the nineteenth century, made it increasingly difficult for Statesmen to barter away parts of countries in the dynastic fashion of bygone centuries.⁶ The consent of the

¹ Compare, above, Chap. 1 and 16, and George W. Keeton, *The Development of Extraterritoriality in China*, London, 1928 (2 vols.).

² Treaties of Oliva (1660), Nystadt (1721), Breslau (1742) and Versailles (1763). See also D. Kvstitch, *Les Minorités, l'État et la communauté internationale*, Paris, 1924.

³ Act of the Berlin Congress, 1878, affecting Bulgaria, Montenegro, Rumania, Serbia and Turkey (Articles 5, 27, 35, 44 and 62).

⁴ See Erlcr, *l.c.*, pp. 85 *et seq.*

⁵ Article I, paragraph 2. See also Fouques-Duparc, *l.c.*, pp. 114 *et seq.*

⁶ Compare, above, Chap. 3.

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populations affected by annexations and cessions appeared to public opinion an indispensable prerequisite of such changes. Yet in an international society based on the rule of force, conquest had to remain a legitimate title to territorial acquisitions, and therefore the compliance with popular demands was more one of form than of substance. Referendum (the act of reference) and plebiscite (the process and result of that appeal), complementary aspects of *one* legislative action, were the agencies through which the *vox populi* was consulted and created.

The model cases of 'honest' plebiscites, i.e. those in which the result roughly corresponds with the real wishes of the population, are presented by the annexation plebiscites of 1792 in Savoy and Nice. These successes led to a rather different kind of plebiscite, such as those stage-managed in Belgium and Mainz. They were based on the Compulsory Liberty Decree of December 15th, 1792, which even in its title gives away the intentions of its drafters. Another series of plebiscites was introduced by those held in the Italian States in 1848 and 1860. These referenda appear to have expressed the political views held at the time by the overwhelming majority of voters, though 'it is true that Italian statesmen of that day had little respect for minorities and were indisposed to tolerate even legitimate opposition'.¹ Though the franchise was restricted and excluded the whole of the peasants, if we may trust the standards of valuation of Rachel Reid,² 'the Assemblies representing, as they certainly did, a majority of the upper and middle classes, represented the most intelligent part of the community'.³ The same does not apply, not even with the limitations which had to be made regarding the plebiscites held in Northern and Central Italy, to those on which the cession of Savoy and Nice to France depended. They were a foregone conclusion. As Cavour said in the Sardinian Chamber of Deputies on May 26th, 1860: 'All parties in France not being favourable to Italy, it was necessary to satisfy them by ceding Savoy and Nice, as otherwise the Emperor would not have been able to continue to manifest his sympathies with us'.⁴ Therefore, it is hardly surprising to find in *The Times* a report from its correspondent which might have come to-day from any of the totalitarian countries: 'The vote was the bitterest irony ever made on popular suffrage – the ballot box in the hands of the very authorities who issued the

¹ The Foreign Office, Historical Section, *Plebiscite and Referendum*, London, 1920, p. 77.

² *ibid.*, p. B2.

³ *ibid.*, p. 78.

⁴ *The Times*, May 28th, 1860.

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proclamation; no control possible; all opposition put down by intimidation.’¹

The essential features of the development of the international protection of minorities and of the principle of self-determination in the pre-1914 inter-State system can be summarized as follows: First, limitations of national sovereignty in favour of religious minorities and citizens living abroad become fairly common. Second, the more the observance of certain minimum standards by European States could be taken for granted the more the precaution of express treaty stipulations was regarded as still necessary only in the border-zones of European civilization. Third, there existed neither proper machinery for the investigation of infractions nor a proper system of sanctions to be applied in the case of the violation of these treaties. Fourth, as the European Greater powers acted as the guarantors of these treaties, the dividing line between a collective and humanitarian intervention on the one hand and intervention as a means of power politics became somewhat blurred. Fifth, neither the minorities in whose favour the treaties were made, nor any individual person belonging to them, had the right of appeal directly to the guarantors or any impartial organ competent to investigate alleged infractions of the treaties. Sixth, while lip-service was paid in the case of annexations and cessions to the principle of the consent of the populations concerned, in practice, this principle was not allowed to interfere with the requirements of power politics.

In the course of the first World War, the Allied Powers made themselves the champions of the idea of national self-determination. In their reply to the German peace proposals of December 12th, 1916, they affirmed ‘that no peace is possible as long as the reparation of violated rights and liberties, the acknowledgment of the principle of nationalities and of free existence of small States shall not be assured’.² While the principle of nationality did its services as a high explosive weapon against Austria-Hungary, Turkey and, to a minor extent, Germany, critics were not lacking in the Allied countries, denouncing this principle. In the words of Sir Alfred Zimmern, ‘self-determination to which homage is being paid by shallow minds is not a principle of liberalism, but of bolshevism’.³ Though this is rather a harsh statement on a conception which

¹ *The Times*, April 28th and 30th, 1860.

² Note of December 29th, 1916, in James Brown Scott, *Official Statements of War Aims and Peace Proposals*, Washington, 1921, p. 28.

³ Sir Alfred Zimmern, *Nationality and Government*, London, 1918, p. xxii.

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is merely the secularization of a theological principle, there is a grain of truth in this assertion. For the Bolsheviks operated very cleverly with this slogan at the peace negotiations of *Brest-Litovsk*, and it fitted perfectly into their campaign against what appeared to them as a war between contending systems of imperialism.¹ Actually this principle is a highly dynamic one at the disposal of anyone who wishes to use it for the upheaval of territorial settlements based on different principles, such as dynastic, historical or strategic considerations. The fact that Wilson, Lenin and Hitler availed themselves with equal success of the possibilities inherent in this idea in our century should prove sufficiently that it cannot be associated exclusively with *one* political philosophy. The propagandist advantages of the principle of national self-determination were, however, such that its inclusion in the Fourteen Points can be directly connected with urgent requests made by the Allies to President Wilson. 'Those who urged this course upon the President were actuated by a desire not to have the Bolsheviks enjoy the sole monopoly of peace formulæ and to profit by the false position in which Germany's policy at Brest-Litovsk had placed her.'² President Wilson's address of January 8th, 1918, which embodies the Fourteen Points, is the Magna Carta of the principle of national self-determination as understood in contemporary international politics. In this speech, to which the Allied powers committed themselves in their note of December 29th, 1917, the principle of nationality is thus elaborated: 'What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in, and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own free life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world, as against force and selfish aggression.'³ While in the case of colonial populations the principle is admitted only as a consideration which 'must have equal weight with the equitable claims of the government whose title is to be determined',⁴ the principle is regarded as applicable without reservation to Russia⁵ and Italy.⁶ In the case of the peoples

¹ See, above, Chap. 5 and John W. Wheeler-Bennett, *Brest-Litovsk. The Forgotten Peace*, London, 1938.

² Wheeler-Bennett, *l.c.*, pp. 144-5.

³ A. B. Keith, *Speeches and Documents on International Affairs, 1918-1937*, London, 1938, Vol. I, p. 4.

⁴ Point Five.

⁵ Point Six.

⁶ Point Nine.

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of Austria-Hungary and of the Turkish Empire, Wilson limits the principle to the granting of the opportunity of autonomous development;¹ in that of the Balkan States it is qualified by the reservation of historically established allegiances;² and in that of Poland, 'which should include the territories inhabited by indisputably Polish population', it is accompanied by a proviso of free access to the sea.³ As Wilson never dreamed of realizing this principle in isolation, but only as part and parcel of a strongly organized international community, the reproach of the disintegrating character of this idea can hardly be sustained. The principle of national self-determination, as understood by Wilson, stands or falls with its connection with a collective system and has nothing in common with the idea of national determination which was, for instance, the basis of the Munich Agreement.⁴ The departures from this principle in the Peace Settlements of 1919 are largely responsible for the unrest which existed during the post-1919 period in Central and Eastern Europe. National independence beyond autonomy, as suggested in the Fourteen Points, was granted to the units of which the Hapsburg Empire had been composed. This meant that each of these successor States had considerable minorities within its territory which could not possibly feel strong allegiances to States only just established. The denial of the benefits of self-determination to Austria and the dismemberment of Hungary reproduced on a microscopic scale the large-scale division of Europe into victors and vanquished. The inclusion in Poland also of large non-Polish minorities did not compare favourably with Wilson's original statement, just as the granting of the Brenner frontier to Italy made strange reading of the passage in Point Nine that 'a readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality'.⁵ It has, however, to be recognized that once the principle of sovereignty and nationality was to be applied to Eastern Europe and the Danubian area, only relative justice could be done to the less numerous nationalities, and their claims had somehow to be squared with acute considerations of an economic and strategical character. In those circumstances, the most that

¹ Points Ten and Twelve.

² Point Eleven.

³ Point Thirteen. The same reservation is made in favour of Serbia in Point Eleven.

⁴ Compare C. A. Macartney, 'The Principles underlying the Munich Settlement', in *The New Commonwealth Quarterly*, 1938 (Vol. V), pp. 243 *et seq.*

⁵ Compare H. W. V. Temperley, *A History of the Peace Conference of Paris*, London, 1921-4, Vols. IV and VI.

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could be achieved for the national minorities was to grant them strong international protection. Provisions of this sort were called for, as Wilson pointed out in his speech of May 31st, 1919,¹ not merely in fairness to the minorities, but in view of the dangers to international peace which might arise from unjust treatment of these minorities. In addition, international obligations of this kind were quite in line with the tradition established in the nineteenth century. This point was firmly made in Clemenceau's letter to Paderewski: 'It has long been the established procedure of the public law of Europe that when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should in the form of a binding international convention undertake to comply with certain principles of government.'² Clemenceau was not hesitant in drawing attention to another aspect in case the representatives of these new States were inclined to forget to whom they owed their newly won sovereignty: 'It is to the endeavours and sacrifices of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence.'³

In view of the obvious danger for minorities arising out of a narrow definition of this term, the minority treaties circumscribe these groups as persons belonging to racial, religious and linguistic minorities. This term covers the concept of national minorities, for it is hardly possible to conceive of a national group which has not racial, religious or linguistic characteristics by which it can be distinguished from the majority of a country's population.⁴ As it has been repeatedly reaffirmed by the Permanent Court of International Justice, 'the main object of the Minority Treaties is to assure respect for the rights of minorities and to prevent discrimination against them by any act whatsoever' on the part of the country bound by these obligations.⁵ These rights comprise all those elementary rights which are, according to Clemenceau, 'as a matter of fact secured

¹ Temperley, *l.c.*, Vol. V, pp. 130-2.

² *ibid.*, p. 433.

³ *ibid.*

⁴ Compare C. A. Macartney, *National States and National Minorities*, London, 1934, p. 4. See also the Advisory Opinions of the Permanent Court of International Justice concerning the Acquisition of Polish Nationality, September 5th, 1923, Series B.7, p. 14, and on the Treatment of Polish Nationals in the Danzig Territory, February 4th, 1932, Series A/B.44, p. 39.

⁵ Advisory Opinion concerning the German Settlers in Poland, September 10th, 1923, Series B.6, p. 25.

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in every civilized State':¹ full and complete protection of life and liberty, equality before the law, which includes a prohibition of *de facto* discrimination,² and equal civil and political rights with the majority of the population in these countries.³ The minority treaties contain elaborate guarantees against the infraction of these minimum standards. In the first place, the clauses of these obligations are recognized by the States bound to observe them as fundamental laws. The international obligations derived from these treaties do not depend on this qualification and they would not be affected in their legal validity by infringements, no matter whether they result from a legislative, judicial or administrative act.⁴ Yet the distinction in most continental countries between ordinary legislation and changes in the constitution which are subject to approval by qualified majorities or to a decision of the people, offered a possibility of withdrawing these treaties from the competence of ordinary legislature by an express stipulation, according to which the country concerned is bound to grant to this treaty a rank equal to its constitution. Second, any modification or revision of these treaties depends on the assent of the majority of the members of the League Council. Third, any member of the Council may bring infractions of the treaties or the danger of such action to the attention of the Council, who may take action according to its discretion. Fourth, any difference of opinion on the interpretation or application of these treaties between the new States, Czechoslovakia, Poland, Rumania and Yugoslavia, and any member of the League Council, is to be decided on the request of the latter by the Permanent Court of International Justice. Similar obligations were imposed on Austria, Hungary, Turkey and Greece.⁵

Compared with the degree of protection granted to minorities in the pre-1914 period, the technique applied after the first World War represents an improvement. As before, a distinction was drawn between Greater and smaller powers from which both Germany and Italy profited. The frequent declarations made by the Italian Prime Minister in the course of the Peace Conference that other

¹ Temperley, *l.c.*, Vol. V, p. 435.

² The Permanent Court of International Justice in the Advisory Opinion quoted above in note 5, p. 296, and in the Advisory Opinion quoted above in note 4, p. 296, Series A/B.44, p. 28.

³ Article 2 of the Polish Minority Treaty, June 28th, 1919.

⁴ The Permanent Court of International Justice, *l.c.*, in note 5, p. 296, above.

⁵ Peace Treaties of St. Germain, Trianon and Lausanne, and Treaty of August 10th, 1920. Compare Erler, *l.c.*, pp. 136 *et seq.*

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nationalities under Italian rule would enjoy all the privileges of Italy's 'liberal and democratic laws',¹ re-iterated in the speech from the throne made by the King of Italy on December 1st, 1919,² induced the Allied and Associated Powers not to insist on the conclusion of a formal treaty. When fascism came to power, however, Mussolini reversed this policy, arguing that Italy had not undertaken any contractual obligations regarding minorities, and asserting that the Germans in South Tyrol were not a national minority, but 'an ethnic relic', 'the last remnants of the barbarian invasion'.³ As is indicated by the fact that neither Belgium nor Denmark was asked to sign treaties similar to those concluded with the newly recognized States, even in the case of the smaller powers, a distinction was drawn between these 'Western' States and their Eastern and South-Eastern counter-parts. Yet the League Assembly in 1922 adopted a resolution, reiterated in 1933, in which the hope was expressed 'that the States which are not bound by legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council'.⁴

The ever-present possibility under the nineteenth-century agreements in favour of minorities that one or several of the Greater powers might use their position as guarantors in order to promote their own national interests was decreased by the introduction of the League of Nations and by the establishment of the Council as the competent body. Though the preponderance of the Greater powers in this organ cannot be denied, the fact that not individual Greater powers, but this collective organ as such had to deal with the issues arising under the minority treaties can be regarded as at least a relative improvement.⁵

While the guarantees for the enforcement of the minority treaties were strengthened, the procedure established for the acceptance and examination of petitions by the League Secretariat and Council

¹ Erler, *l.c.*, p. 254.

² *ibid.*, p. 255.

³ Speech in the Italian Chamber, February 6th, 1926, reported in *Neue Zürcher Zeitung*, February 7th, 1926.

⁴ Records, Third Assembly, 1922, Plenary Meetings, p. 186, and Records, Fourteenth Assembly, 1933, Plenary Meetings, *Official Journal*, Special Supplement No. 115, p. 88. See on the reasons for the failure of the attempt to make League membership dependent on undertakings in favour of minorities, the present writer's *The League of Nations and World Order*, London, 1936, pp. 61 *et seq.*

⁵ See Clemenceau's letter to Paderewski in Temperley, *l.c.*, Vol. V, pp. 434-5.

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does not give to minorities the position of parties which can sue their States on a basis of equality before the international organs established under these treaties.¹ The initiative in the League Council can only be taken by a member of this body, and it depends on this formal step being taken by any power represented on the Council whether that organ is at all in a position to deal with a petition. In view of the fact that any country against which a petition has been submitted to the League is only too easily inclined to regard such action on the part of any other country as a rather unfriendly gesture, it is obvious that in any system of this sort the considerations of other members of the Council are not exclusively influenced by the strength of the case which is or is not to be submitted to the Council. For whatever quasi-judicial functions may be attributed to the members of the Council acting in the capacity of an organ of appeal, they remain, as the Permanent Court of International Justice stressed in an Advisory Opinion dealing with minority questions, 'by the terms of the Covenant, the representatives of the States by which they are appointed'.²

The value of the collective guarantee was inseparably linked up with the strength and decadence of the collective system of Geneva. When the League of Nations gradually disintegrated under the onslaught of the attacks delivered since 1931 with ever-increasing momentum, the minority system broke down. It was left to Poland first to denounce its obligations towards the League in this respect³ and to seek refuge in a direct understanding with the Third Empire.

The German-Czechoslovak conflict over the Sudeten Germans finally drove home the lesson of the functions of national minorities in a system of power politics. It is well to remember that the situation of this minority was infinitely better than that of the German minorities in Poland or Italy, not to speak of the position of Jews and other minorities in Nazi Germany. Until Austria had been incorporated into Germany, not even the Third Empire raised any complaints against the treatment of this minority, which had never, in the whole history of the German *Reich*, belonged to that country. Furthermore

¹ More far-reaching rights were granted to the minorities under Article 147 of the Geneva Convention of May 15th, 1922, between Germany and Poland, and under Article 7 of the Åland Convention of October 20th, 1921.

² *I.c.* in note 5, p. 296, above, p. 22.

³ Compare Colonel Beck's speech in the League Assembly of 1934, *Official Journal*, Special Supplement No. 125, p. 43.

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Germany was in a position to bring any alleged grievance before the organs established at Locarno under the German-Czechoslovak Arbitration Treaty. Finally, the Minority Treaty of September 10th, 1919, provided in Article 14 for the possibility of its revision with the consent of the majority of the League Council. Yet, as Lord Runciman pointed out in his report, the very fact that the Czechoslovak Government was prepared to make far-reaching concessions in the end ruled out the possibility of a settlement within the framework of the Czechoslovak State and of its constitution.¹ Had the powers wished to resist the Nazi demands, they might have found comfort in the report submitted to the Council by a League Commission concerning the Aaland question: 'To concede minorities, either of language or of religion, or to any fractions of a population, the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within States, and to inaugurate anarchy in international life.'² Yet even assuming that the principle of national self-determination justifies in an extreme case such a drastic step and taking for granted that in this case a measure of this kind was required by circumstances, three questions remain: First, on what grounds can a fascist State invoke this liberal, bolshevist or Wilsonian principle which is certainly not part of its politico-moral code, to judge from its own treatment of minorities? Second, assuming that even Hitler is entitled to appeal to Wilson's Fourteen Points, why was there any need to grant the application of *one* Wilsonian principle without demanding the submission of the petitioner to the other thirteen which are inseparably connected with it? Third, what was done to ascertain the will of the minorities concerned?

The answer is simple. Hitler never asked for the application of the principle of national self-determination. He only used this misnomer in order to give weight to his propaganda campaign in the democracies. What he demanded, and achieved, was the application of the principle of national determinism, based on a by no means unbiased Austrian census of 1910.³ The reason which prompted him is equally plain. His objective was the dismemberment of the Bohemian fortress. So long as this link in France's

¹ Cmd. 5847, London, 1938, p. 4.

² Council Document B.7, 21/68/106.

³ Compare Macartney, *l.c.*, above, in note 4, p. 295.

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system of Eastern alliances existed, particularly in connection with the Franco-Soviet alliance, Czechoslovakia prevented an 'active' Eastern and Western policy on the part of the Third Empire. Its existence equally barred the way to those parts of Europe which geo-political as well as imperialist thinking regards as the 'natural' hinterland of the Greater power in the 'heart' of Europe.¹ As has become plain meanwhile, the Nazi concern for the German minorities in Czechoslovakia was nothing but the ideological screen for very primitive conceptions of conquest and domination in complete disregard of the nationalities of the subjected peoples. While the principle of national self-determination in some areas can be applied without undue difficulties, and in others at least the life of minorities can be made reasonably tolerable, its degeneration into a vehicle of expansionist power politics can only be prevented within the framework of a strongly organized international community.

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CHAPTER 22

THE LEAGUE OF NATIONS AND THE HIERARCHY OF STATES

THE world that emerged from the first World War was divided into world powers, Greater powers, smaller States and a substratum of colonies and dependencies that had not yet reached the stage of national sovereignty. Even disregarding for the moment the last and most difficult aspect of the problem, the question of fair representation of world-wide empires, great and small States is in itself an issue difficult enough. The contention put forward at the Hague Peace Conference of 1907 by some of the South and Central American republics that States should be represented, for instance in an international court, on the basis of absolute equality,¹ may be in accordance with the principle of the legal equality of States, but it can hardly claim any higher moral sanction. For it would be difficult to defend the thesis that a country with a few hundred thousands of inhabitants should have equal say in the organization of world affairs as, for instance, the United States of America or China.² It is, however, a different proposition if this argument merely implies that also small nations have a right of unhampered existence and should be protected against arbitrary decisions taken by States superior in number of population, wealth or military strength. Then the question is transformed into a problem that somehow has to be solved by any community, i.e. the protection of minority groups in ways which do not unduly affect the efficient working of the organization as a whole.

The solution chosen by the drafters of the Covenant cannot be regarded as unfair. While the principle of legal equality is safeguarded by the rule that all members of the League are represented in the League Assembly and 'shall have one vote'³ each, the special

¹ See James Brown Scott, *The Proceedings of The Hague Peace Conferences*, New York, 1921, Vol. II, pp. 147 *et seq.*

² See J. L. Brierly, *The Law of Nations*, Oxford, 1936, p. 92.

³ Article 3, paragraph 4.

position of the Greater powers is safeguarded by the privileged position granted to them as permanent members of the League Council. The increase in the number of non-permanent members to eleven further diminished the preponderance of the Greater powers in this League organ.¹ In addition, the position of a League member not represented on the Council is protected by the proviso that it has the right to *ad hoc* representation in that body during the consideration of matters specially affecting its interests.² Finally, apart from a few exceptions,³ the Assembly has a competence concurrent with that of the Council in all matters within the sphere of action of the League or affecting the peace of the world,⁴ and thus any question of this kind can, if necessary, be transferred from the Council to the Assembly.⁵ Compared with the possible extremes, limitation of membership in the Council or even in the League to Greater powers⁶ and schematic application of the principle of absolute equality,⁷ it appears that a fair and realistic balance was struck by this compromise between formal equality and a *de facto* hierarchy.⁸ For, as Lord Cecil pointed out in the Drafting Commission, 'the chief need, in making the League a success, is the support of the Great Powers. It must be attractive to them all. Frankly, the small powers will, in all likelihood, join, anyway.'⁹ Everything depended on the spirit in which the Greater powers approached League problems. If they were imbued with the sense of responsibility which a community presupposes, the special position which was accorded to them in the system of the Covenant could only have beneficial results. If this common purpose was lacking, then the existence of the Council did not mean more than the opportunity of a standing conference, in itself a valuable improvement on the pre-1914 technique of diplomatic relations. As it happened, the increasingly overt return of the League members to power politics gave only at rare moments a chance to the delegates

¹ See the League of Nations, *Official Journal*, 1936, pp. 547-9 and 661.

² Article 4, paragraph 5.

³ Article 6, paragraph 3, Article 16, paragraph 4, and Article 22, paragraph 7-9. See also Oppenheim-Lauterpacht, *International Law*, London, 1937, Vol. I, pp. 316 *et seq.*

⁴ Article 3, paragraph 3.

⁵ See on this question President Wilson at the Third Meeting of the Drafting Commission, D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. I, p. 161.

⁶ See Charles Seymour, *The Intimate Papers of Colonel House*, Boston, 1926-8, Vol. IV, pp. 24 *et seq.*

⁷ Suggestion made by the representative of Uruguay in the Ninth Assembly, 1928, *Official Journal*, Special Supplement No. 64, p. 132.

⁸ See the Memorandum of the Government of the Netherlands of January 13th, 1934, *Official Journal*, 1934, p. 288.

⁹ Miller, *l.c.*, Vol. I, p. 161.

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of these governments to behave as if they were the representatives of 'the Great Responsibles' and not merely of the Great powers.¹

An issue much more fundamental, for affecting deeply both sentiment and material interests, was the problem of imperialism and racial equality.² Two of the Statesmen closely associated with the drafting of the Covenant were very conscious of the fact that power politics, alliances and policies of imperialism are as compatible with an international community as fire is with water. General Smuts puts the position as follows: 'The process of civilization has always been towards the league of nations. The grouping or fusion of tribes into a national state is a case in point. But the political movement has often gone beyond that. The national state has too often been the exception. Nations in their march to power tend to pass the purely national bounds; hence arise the empires which embrace various nations, sometimes related in blood and institutions, sometimes, again, different in race and hostile in temperament. In a rudimentary way all such composite empires of the past were leagues of nations, keeping the peace among the constituent nations, but unfortunately doing so not on the basis of freedom but of repression. Usually, one dominant nation in the group overcame, coerced, and kept the rest under. The principle of nationality became overstrained and over-developed, and nourished itself by exploiting other weaker nationalities. Nationality overgrown became imperialism, and the empire led a troubled existence on the ruin of the freedom of its constituent nations. That was the evil of the system; but, with however much friction and oppression, the peace was usually kept among the nations falling within the empire. These empires have all broken down, and to-day the British Commonwealth of Nations remains the only embryo league of nations because it is based on the true principles of national freedom and political decentralization.'³ President Wilson was no less emphatic in his repeated reminders 'that it was impossible with one foot in the Old order and the other in the New to arrive anywhere'.⁴ He repeated this warning on January 25th, 1919, in the Plenary Session of the Peace Conference, when he referred to 'the holding together of empires of unwilling subjects by the duress of arms'.⁵

Later on, however, Wilson himself appeared to waver. After his

¹ Compare Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, p. 84.

² See, above, Chaps. 5 and 6.

³ Miller, *l.c.*, Vol. II, p. 25.

⁴ Ray Stannard Baker, *Woodrow Wilson and the World Settlement*, New York, 1922, Vol. II, pp. 226-7.

⁵ See, above, Chap. 13, pp. 192-3.

visit to the United States, he insisted on the insertion into the Covenant of the Monroe Doctrine which was at that time regarded not so much as a doctrine of mutual non-interference, but as an indefinite programme of expansion of the United States of America on the American continent.¹ Nor had Wilson in mind to re-open all colonial questions. It is true, the fifth of Wilson's Fourteen Points can be read in this way: 'A free, open-minded, and absolutely impartial adjustment of all colonial claims based upon a strict observance of the principle that, in determining all such questions of sovereignty, the interests of the populations concerned must have equal weight with the equitable claims of the Government whose title is to be determined.' He was quite content to limit the application of the principle of trusteeship over backward areas to the former German colonies and the parts to be dismembered from the Turkish Empire.² General Smuts was quite prepared to let the peoples and territories formerly belonging to Russia, Austria, Hungary and Turkey enjoy the benefits of his scheme, but he did not believe in the advisability of its extension to the German colonies: 'The German colonies in the Pacific and Africa are inhabited by barbarians who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of political self-determination in the European sense. They might be consulted as to whether they want their German masters back, but the result would be so much a foregone conclusion that the consultation would be quite superfluous.'³ President Wilson, however, definitely demanded the inclusion of the German colonies in the mandate system. While considerations of principle might have influenced this decision, he acted in accordance with the American interest to limit as far as possible any Japanese expansion in the Pacific. Though it would not have been practical politics to refuse the Japanese demands for annexation of the German possessions in the Pacific outright, the international supervision of the mandates by the League and the 'prevention of the establishment of fortifications or military and naval bases'⁴ appeared at the time to offer sufficient safeguards from the standpoint of United States strategy in the Pacific.⁵

The Mandate system, as actually applied to the former German

¹ Compare Baker, *l.c.*, Vol. I, pp. 329-38, and Miller, *l.c.*, Vol. I, p. 447, and Vol. II, pp. 369 *et seq.*

² See the official commentary of the U.S.A. on the Fourteen Points, Seymour, *l.c.*, Vol. IV, p. 198.

³ Miller, *l.c.*, Vol. II, pp. 28-9.

⁴ Article 22, paragraphs 5 and 6, of the Covenant.

⁵ See Miller, *l.c.*, Vol. I, p. 114.

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colonies and the territories dismembered from the Turkish Empire, imposes far-reaching limitations on the mandatory powers compared with the embryonic forms of trusteeship as introduced before 1914.¹ It embodies six distinct principles.

First, the principle of non-annexation. In the case of the A mandates, it is expressly pointed out that the mandates are only to last 'until such time as they are able to stand alone'.² While nothing is said as to the ultimate destination of the B and C mandates, even the latter are only to be administered 'as internal portions' of the territory of the mandatories, but they do not form part of these countries.³ Though in practice the difference is small between a crown colony and a territory which is governed as if it were one, in law the distinction exists. The tutelage over all the mandates is exercised by the mandatories 'on behalf of the League'.⁴

Second, the principle of tutelage by advanced nations. While it may be doubtful whether objective standards exist for the determination of the characteristics of advanced and backward nations,⁵ the assumption in 1919 definitely was that the Greater powers of the world belonged to this latter category. The object of this tutelage, 'a sacred trust of civilization', is defined as the promotion of 'the well-being and development of such peoples'.⁶ Whereas, in the pre-1914 period, the emphasis was on the aspect of the dual mandate which interested the other powers most, the principle of the open door,⁷ this object has now become subordinate to the overriding interests of the mandated territories themselves.

Third, the principle of the open door. Only under the reservation just made is it correct to regard this principle as a principle which finds expression in Article 22 of the Covenant. There the obligations of the Mandatories in this respect are limited to those mandates which belong to category B, but as a result of the pressure of the First League Assembly and of the United States, clauses of a similar kind were inserted also into the treaties between the League and the States entrusted with the A mandates.⁸ As becomes evident from the

¹ Compare, above, Chap. 6.

² Article 22, paragraph 4.

³ *ibid.*, paragraph 6. See also James C. Hales, 'The Creation and Application of the Mandate System', in *Transactions of the Grotius Society*, London, 1940 (Vol. 23), pp. 191-2.

⁴ Article 22, paragraph 2.

⁵ *ibid.*

⁶ *ibid.*, paragraph 1.

⁷ See, above, Chap. 6.

⁸ Compare The League of Nations, *Official Journal*, 1921, pp. 139 *et seq.*, J. Stoyanowski, *La théorie générale des mandats internationaux*, London, 1925, p. 168, and D. F. W. van Rees, *Les mandats internationaux*, Paris, 1928, pp. 150-1. On the non-extension of this principle to the C Mandates, see W. Abendroth, *Die völkerrechtliche Stellung der B- und C-Mandate*, Breslau, 1936, pp. 117 *et seq.*

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formulation in Article 18 of the Palestine Mandate, for instance, the principle of non-discrimination against other League members does not preclude the mandatory from the imposition of taxes and customs duties within its discretion, from taking such steps 'as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population, and from the conclusion of preferential customs agreements on a regional scale.¹

Fourth, the principle of military non-exploitation of the mandated territories might be considered to be implied in the conception of trusteeship, but it is actually limited in its full application to the B and C Mandates.² In these territories, the establishment of fortifications or military and naval bases and the military training of the natives for other than police purposes and the defence of these mandates are prohibited.³ This principle, although obviously in the first place thought to be in the interest of the indigenous populations, equally suits other powers, who cannot be anxious to see the mandatory using his function as a trustee in order to improve his own strategic and military position. The Permanent Mandates Commission always had a tendency to interpret this clause restrictively. To give only one example: the commission resolved, and the League Council approved, that the mandatory is not even entitled to accept volunteers from inhabitants of these territories for units not destined for service within the mandates.⁴

Fifth, the principle of self-determination was to be, in the case of the A Mandates, 'a principal consideration in the selection of the Mandatory'.⁵ When Feisal, King Husain's son, came to Paris in 1919 in order to demand the fulfilment of the promises made to his father by the Allied Powers, he was treated as an exotic rarity, but could not get a fair hearing for his demands.⁶ On President Wilson's suggestion to send a commission to Syria in order to make an inquiry into the attitude of the populations concerned, Clemenceau and Lloyd George agreed 'in principle'. Yet when the French refused to nominate their members of the commission, Lloyd George declared in

¹ See the present writer's *Das Volkerbunds-Mandat für Palaestina*, Stuttgart, 1929, pp. 52 *et seq.*

² Compare Article 17, paragraph 3, of the Mandate for Palestine.

³ Article 22, paragraphs 5 and 6. See, however, the exceptions to this rule in Article 3, paragraph 2, of the Mandates for French Cameroon and Togoland.

⁴ *Minutes of the Permanent Mandates Commission*, III, p. 311, and *Official Journal*, 1926, p. 867.

⁵ Article 22, paragraph 4, of the Covenant.

⁶ See R. Lansing, *The Big Four and Others at the Peace Conference*, Boston, 1921, p. 168, and P. Lyautey, *Le drame oriental et le rôle de la France*, Paris, 1924, p. 126.

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those circumstances his inability to do so, and in May, 1919, the American members left alone.¹ On their return, they expressed the opinion that Syria should not be divided and that the pro-Zionist policy of the Allies contradicted the principles proclaimed by the Allies 'for the establishment of national governments and administrations, drawing their authority from the initiative and free choice of the native populations'² of these territories. While in Palestine the realization of this principle was not possible without a violation of the contradictory promises made to the Zionist leaders in the Balfour Declaration, or without a restrictive interpretation amounting to its abolition,³ Great Britain did its best to fulfil her promises in Iraq and in Transjordan, which, for all practical purposes, was separated from the Mandate over Palestine. Finally, the French Mandate in Syria, a continuous history of insurrections and troubles,⁴ has still to prove that 'the rendering of administrative advice and assistance by a mandatory' will bring that country nearer to the day when it will be 'able to stand alone'.⁵

Sixth, the principle of international supervision. The existence or absence of effective control of the trustee supplies the test whether this term is only meant as a convenient slogan or whether there is a reality behind it. The League Council is the organ charged with the supervision of the mandatories who have to render to the Council an annual report on their activities in the mandated territories.⁶ The Permanent Mandates Commission receives and examines the reports of the mandatories and advises the Council on all matters relating to the observance of the mandates.⁷ The Commission is composed of ten members, the majority of which must be nationals of non-mandatory powers. The members are appointed by the Council 'and selected for their personal merits and competence. They shall not hold office which puts them in a position of direct dependence on their governments while members of the Commission'.⁸ The inhabitants of the mandatory territories have access to the Mandates Commission by means of petitions, which must reach the Commission through the channel of the government of the mandatory, which is thus enabled

¹ Compare *l.c.* in note 1, p. 308, above, pp. 24 *et seq.*

² British Proclamations made in Bagdad in March, 1918, and on November 8th, 1918. See John de Vere, *The Truth about Mesopotamia, Palestine and Syria*, London, 1923, p. 32.

³ Compare *l.c.* in note 1, p. 308, above, pp. 19 *et seq.*

⁴ See for a detached survey G. M. Gathorne-Hardy, *A Short History of International Affairs*, London, 1938, *passim*.

⁵ Article 22, paragraph 4, of the Covenant.

⁷ *ibid.*, paragraph 8.

⁶ *ibid.*, paragraph 7.

⁸ *Official Journal*, 1920, pp. 87-8.

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to add its own observations before the petition is examined by the Commission.¹ The practice of the Mandates Commission has proved that it is able, even with the limited machinery at its disposal, to exercise a considerable amount of control over the mandatories.² While the consideration of colonial questions in the national legislatures of colonial powers is a matter which is always in danger of suffering from the competition of issues nearer home and, therefore, regarded as more urgent,³ the discussions on the reports submitted by the mandatories have secured widespread publicity for these territories and for shortcomings in their administration. It may even be said that the chief value of the mandate system lies 'in the publicity to which it subjects the mandatory governments'.⁴ The glaring light of publicity appears to spur mandatories to efforts which compare favourably with the results of their administration in neighbouring colonies not subject to international control. Figures show that in South-West Africa under the Mandate the colonial population receives more from direct taxation than it gives, whereas in the Union of South Africa the situation is reversed. 'In South-West Africa, the native has, proportionately to the white, much more land than the native in the Union. In South-West Africa there is no poll tax which drives the native out of his reserves to work for the white man.' Under the Mandate in the French Cameroons, as well as in French Togoland, 25 per cent. of the annual revenues are spent on the social and economic services: in the colonies of French Equatorial and French West Africa, 11 to 16 per cent.⁵ In these colonies, there is always a considerable deficit, whereas the debts of the French mandated territories are insignificant. There 'the population diminishes; that of the Cameroons rises'.⁶

As in the case of the international guarantees in favour of minorities, the degree of supervision and its value are inseparably connected with the vigour or decadence of the collective systems as such. Here, as in any other sphere of international collaboration, the primitive truth is 'that any real international government is impossible so long as power, which is an essential condition of government, is organized nationally'.⁶ Yet if the pre-1914 state of colonial affairs

¹ *Official Journal*, 1922, p. 1,272, and 1923, pp. 211 and 300.

² Compare H. R. G. Greaves, *The League Committees and World Order*, London, 1931, pp. 169 *et seq.*

³ See, above, Chap. 6.

⁴ Lord Hailey, *An African Survey*, London, 1938, p. 1,642.

⁵ G. L. Steer, *Judgment on German Africa*, London, 1939, p. 13. See also H. Labouret, *Le Cameroun*, Paris, 1937.

⁶ E. H. Carr, *The Twenty Years' Crisis*, London, 1939, p. 139.

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is compared with the mandate system and the effects which the very existence of mandates exercised on the mentality of other colonial administrations,¹ it cannot be denied that the ideology of colonial trusteeship has been transformed, at least to a certain extent, into a reality.²

Both in the question of State equality and imperialism, the drafters of the Covenant attempted to avoid extremes. Their solution, by which they harmonized existing *de facto* hierarchies with the principle of the equality of nations, big and small alike, left it to the future whether this relationship would continue to be governed by the traditional motivations of power politics or whether the Greater powers would regard themselves as the responsible leaders towards the integration of a world community. Equally, the compromise between open annexation of the German colonies and the parts disrupted from Turkey and a radical solution of the colonial problem on the lines of a transformation of all colonial possessions into mandates under League supervision was the maximum that could have been achieved in 1919.

Yet, underneath the surface questions of formal equality and the disposal of the spoils of the war, the more fundamental issue of the alleged superiority of the white race and the over-emphasis on Europe compared with the rest of the world are problems which have accompanied the League throughout the years. True, Japan, as one of the principal Allied and Associated Powers, had been accorded a permanent seat on the League Council, and it received its share in the distribution of the mandates. There was, however, another question for which the proposed League did not seem to provide a remedy: Japan's over-population. As Colonel House pointed out to Mr. Balfour, who expressed 'a great deal of sympathy with this view', 'the world said that they could not go to Africa; they could not go to any white country; they could not go to China, and they could not go to Siberia; and yet they were a growing nation, having a country where all the land was tilled; but they had to go somewhere'.³ Even when the Japanese delegates in the Drafting Commission toned down their original suggestions to a proposal which merely asked for an insertion into the Preamble

¹ In Article 23 (b) of the Covenant, the members of the League undertook 'to secure just treatment of the native inhabitants of territories under their control'.

² See Hailey, *loc. cit.*, pp. 135-6 and 1,639-40, and *Statement of Policy on Colonial Development and Welfare*, London, 1940, Cmd. 6,175.

³ D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. I, pp. 183-4.

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of the Covenant of a clause endorsing the principle of the equality of nations, and the just treatment of their nationals, a minority of the Commission prevented its acceptance.¹

President Wilson ruled that, in the face of formal opposition to the proposed amendment, unanimity was required.² The votes cast in favour of the Japanese draft were those of Japan, France and Italy, two each, of Brazil, Czechoslovakia, China, Greece and Yugoslavia. The delegations which did not support the amendment were the two Anglo-Saxon countries, Poland, Portugal and Rumania.³ It fell on Lord Cecil, acting, as he said, on the instructions of his Government, formally to oppose the amendment. As David Hunter Miller recorded in his Diary, 'it seemed to me at the time that Cecil felt that he was performing a difficult and disagreeable duty. After making his statement, Cecil sat with his eyes fixed on the table, and took no part in the subsequent debate'.⁴

In a slightly modified form, this question arose repeatedly in the subsequent history of the League. Both the American and Asiatic members of the League regarded themselves as under-represented in the League Council. It has been suggested that this 'Europeanization of the League', as Rappard has called it,⁵ is due to the fact 'that Europe is still the political and cultural centre of the world',⁶ that the seat of the League is situated in Europe, which makes it easier for European States to attend the sessions of its organs, or that the main functions of the League, the maintenance of world peace and the development of international co-operation, are foremost European problems.⁷ Yet, even if all these factors are taken into account and it is sufficiently realized that by 1931 half of the members of the League were European States, compared with 38 per cent.

¹ D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. I, pp. 268 *et seq.* and pp. 461 *et seq.*, and Vol. II, pp. 323 *et seq.* and pp. 702 *et seq.* See also Ray Stannard Baker, *Woodrow Wilson and the World Settlement*, New York, 1922, Vol. II, pp. 234 *et seq.*, and Charles Seymour, *The Intimate Papers of Colonel House*, London, 1926-8, Vol. IV, pp. 320 *et seq.*

² Miller, *l.c.*, Vol. I, p. 464.

³ *ibid.*, Vol. I, pp. 463-4.

⁴ *ibid.*, Vol. I, p. 461.

⁵ William E. Rappard, *The Geneva Experiment*, London, 1931, pp. 41 *et seq.*

⁶ C. K. Webster, *The League of Nations in Theory and Practice*, London, 1933, pp. 62-3.

⁷ Pitman B. Potter, *An Introduction to the Study of International Organization*, New York, 1935, pp. 471 *et seq.* See also Quincy Wright, *The Causes of War and the Conditions of Peace*, London, 1935, p. 96; Sir Alfred Zimmern, *l.c.*, p. 448; the speeches of the Belgian and Swiss representatives in the Seventh League Assembly, 1926, *Official Journal*, Special Supplement No. 44, pp. 32, 69 and 75-6, and of Litvinov in the Sixteenth Assembly, 1935, *ibid.*, Special Supplement No. 138, p. 72.

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in 1920, the difficulties which arose in connection with Brazil's¹ and China's representation² on the Council, indicate that the League was not only lacking universality in scope, but also that broadness in outlook to be expected from an organization aiming at a world community. The problem was well outlined in resolutions adopted by the League Assemblies of 1922 and 1923, when it was decided in the abstract to make the choice of non-permanent members of the Council 'with due consideration for the main geographical divisions of the world, the great ethnical groups, the different religious traditions, the various types of civilizations and the chief sources of wealth'.³ While this functional approach to the problem was chosen in order to regulate the appointment of eight of the twelve persons representing the governments in the Governing Body of the International Labour Office,⁴ in the League of Nations neither here nor in other vital spheres of its activities could the gap between pious aspiration and political reality be bridged before the sands of this institution were running out.

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³ The League of Nations, *Official Journal*, Supplement No. 23, p. 160.

⁴ These delegates are nominated by 'the members which are of chief industrial importance', Treaty of Versailles, Article 393.

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CHAPTER 23

THE *DE FACTO* REVISION OF THE COVENANT AND THE RETURN TO POWER POLITICS

THE decline of the Covenant in the past few years is sometimes traced to the failure of the sanctions experiment during the Italo-Abyssinian War, and sometimes, still further, to the Manchurian conflict. It is certain that both these events mark decisive phases in a development which can be described as a *de facto* revision of the Covenant.¹

It seems, however, that a more comprehensive understanding of this phenomenon is obtained if it is viewed in a wider perspective. The radical incompatibilities between the Covenant and political reality have existed since the League was created. The initial contradictions between the conception of a collective system as it was envisaged by the drafters of the Covenant and the political system laid down in the other parts of the Peace Treaties already foreshadowed the obstacles and adjustments between idea and reality which, at later stages, exposed the League to charges of inefficiency and to ridicule.²

Not only were the Peace Treaties of 1919 incompatible with any community system, but their drafters also ignored lessons which the Allied and Associated Powers might have learnt from the 1815 Peace Settlement, to which Europe was at least indebted for a far-sighted balance of power system. The Treaty of Versailles reflected the continental hegemony of France. The unholy alliance of the Covenant and the Peace Treaties could not possibly endure.

What were the reactions of the powers to this strange compound of the rule of law and the rule of force?

¹ Compare for a more detailed analysis the present writer's 'The State Members of the League and the *de facto* revision of the Covenant', in *The New Commonwealth Quarterly*, 1936 (Vol. II), pp. 351 *et seq.*, 1937 (Vol. III), pp. 262 *et seq.*, 1938 (Vol. III), pp. 360 *et seq.*, 1938 (Vol. IV), pp. 60 *et seq.* and J. L. Kunz, 'Observations on the *de facto* Revision of the Covenant', *ibid.*, 1938 (Vol. IV), pp. 131 *et seq.*

² See, above, Chap. 13.

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To France and her Eastern satellites, the maintenance of the territorial *status quo*, together with the hegemonial system created by the Peace Treaties, appeared as the *raison d'être* of the Covenant. Hence they were the prime instigators of the process tending to the identification of the League with the Peace Treaties.¹

British Statesmen rapidly became aware of the grotesque and dangerous situation, which could, in their opinion, become acclimatized to reason only through the strengthening of dynamic tendencies. Imbued as they were with the traditional conceptions of the balance of power, they were suspicious of the unrestricted value of a community system proper, which, in their opinion, was an impracticable and utopian dream. Therefore it is not surprising that they attempted to ward off the unpleasant contingency by their support of a development tending to the formation of a relatively stable balance of forces. The Washington Treaties on the Pacific (1922) and the Locarno Agreements (1925) best exemplify this trend, which is again clearly discernible in British policy *vis-à-vis* the U.S.S.R. and in the British attitude in the question of German reparations.²

Italy, with the realism apposite to fascism, was the first League member to remind the world that the community system of Geneva could not be applied against 'Greater' powers. As Grandi expresses it, 'at Corfu the Duce fired his gun, not to intimidate Greece, but to intimate to Europe that it was time to halt for a moment to consider Italy's international position'.³ The decision of the Conference of Ambassadors on Italy's special position in Albania,⁴ a fellow member of the League, the understanding in respect of Abyssinia arrived at by Italy and Great Britain in 1925 and only cancelled after a strong protest from the Negus,⁵ and the agreements concluded between Mussolini and Laval in January, 1935,⁶ have at least one feature in common. This is the consistent and indefatigable pursuance, in the best traditions of power politics, of a policy of

¹ Compare C. J. Friedrich, *Foreign Policy in the Making*, New York, 1938.

² See, above, Chaps. 16-18.

³ Council on Foreign Relations, *The Foreign Policy of the Powers*, New York, 1935, p. 83.

⁴ See G. M. Gathorne-Hardy, *A Short History of International Affairs*, London, 1938, pp. 83 *seq.*

⁵ Exchange of Notes between the United Kingdom and Italy regarding certain British and Italian Interests in Abyssinia, *The League of Nations, Official Journal*, 1926, pp. 1,517 *et seq.*

⁶ Arnold J. Toynbee and V. M. Boulter, *Survey of International Affairs, 1935*, London, 1936, Vol. I, pp. 103 *et seq.*, and *La Documentation Internationale*, Paris, April 15th, 1935.

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aggrandizement which directly contravenes both letter and spirit of the Covenant.

With Japan, it must be admitted that exigencies exceeded those of Italy, since the former country was especially affected by two flaws in the collective system. These consisted in its incompetence in matters of immigration and its incapability to realize one of the implied conditions of the Covenant: freedom of trade.¹ Free competition became increasingly vital for Japan when, in view of the impossibility of large-scale emigration, she was forced to industrialize at the highest possible rate of intensity. Also, it should be remembered that the Peace Conference is partially responsible for the inculcation of an inferiority complex into Japan by its rejection of the Japanese demands to recognize the principle of racial equality as one of the fundamentals of the new community system.²

Small States fall into one of two groups, according to whether they pertain to the category of neutral States, which only in exceptional cases, such as Denmark, benefited territorially from the Peace Treaties, or whether, as in the instance of the eastern and south-eastern neighbours of Germany, they were the creations of these settlements. Whereas the former could only gain real independence and security through a community system proper, the latter deemed it prudent to rely primarily upon military alignments with France, the protagonist of the Versailles order, and to revere the Covenant in so far as it was the embodiment of Articles 10 and 16, but at the same time to interpret their corollary, Article 19, as an epitome of bad taste or a veiled bellicose threat.

It is no miracle, therefore, that in the territories of the former Central powers, especially in Germany, and also in States such as Italy and Japan which were dissatisfied with their share of the spoils, the League was arraigned as a new ideological smoke screen which served as a first line of defence for the vested interests which the settlements of 1919 were designed to protect.

An attitude of still more intense suspicion prevailed in the U.S.S.R., whose rulers were convinced only after a long period that the employment of the League for aggressive ends directed against themselves was conditioned as much by their own readiness to co-operate or preference to remain aloof as on any forces hostile to Russia and her social system.³

¹ See, above, Chaps. 16 and 19.

² *ibid.*, Chap. 22.

³ See Kathrin W. Davis, *The Soviets at Geneva*, Geneva, 1934.

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Probably no other factors contributed so much in the U.S.A. to the strengthening of isolationist tendencies as repulsion by the realities of the political situation, together with a profound disappointment at the outcome of a war fought to end war. Spasmodic efforts on the part of the U.S.A. to rectify this state of affairs, for instance, by participating in the Disarmament and World Economic Conferences and in the various non-political activities of the League, could not compensate for an indifference towards matters in which the positive influence of this Power might at least have assisted in reducing French hegemony on the Continent to *one* force within a world balance system.¹

It was inevitable that this tendency should affect the Covenant with increasing frequency and obtrusion, until gradually even the lip-service which had customarily been paid to it in the initial stages of this development fell into disuse.

In the light of unrestricted power politics, the most embarrassing clause was that pertaining to sanctions. Article 16 was still taken seriously when the Second Assembly attempted to tone down its formidable character by means of interpretative resolutions, which, not being tantamount to formal alterations of the Covenant under the procedure of Article 26, could be ignored in so far as the legal obligations of the member States were concerned, and at the same time, by their very existence, procured the desired political effect: to weaken the belief in a system of sanctions which automatically militated against any transgressor whatsoever. The interpretative resolutions cleared the path for those many negotiations and understandings (which are of inestimable value in a system of power politics, but incompatible with a community law), involving the question of whether, in an actual case, a State would honour her legal obligations, or whether, on the contrary, she might be induced to make use of the discretion accorded by the interpretative resolutions, with the reverse effect.²

The award of the Council in the *Upper Silesian* case between Germany and Poland, the passivity of the League during the occupation of the Ruhr, the incorporation of Vilna into Poland, the Lithuanian *fait accompli* in Memel, and, most provocative of all, the Italian bombardment of Corfu are illustrative of the functioning of the League system in its first years of existence.

¹ Compare Russell M. Cooper, *American Consultation in World Affairs*, New York, 1934.

² See, above, Chap. 17.

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Even the Locarno period, although marked to a lesser degree by flagrant violations of the Covenant, on more than one occasion provides material for the thesis that this stage could only be distinguished from the preceding one by the more dignified and more tortuous methods which the European powers devised to cover their return to power politics. First, the agreements themselves, though constructed to depend on Germany's membership of the League, were the exclusive work of the interested chancelleries. The League was only asked to bestow its blessing, thereby qualifying the agreements as regional undertakings in the idiom of Article 21 of the Covenant. Second, the intrinsic conception of these treaties relegated them to a past which thought in terms of guarantees and balance of forces. Third, the ensuing scramble over Germany's seat on the Council, a move which was counterbalanced by the admission of Poland, was indicative of the extent to which the members of this body were concerned with questions of majorities and alignments. Fourth, the signatories of the Locarno treaties agreed on yet another interpretation of Article 16 of the Covenant, according to which the geographic and military position of Germany was to be taken into account whenever the Article was to be applied. The effect of this concession, made by signatories 'not in a position to speak in the name of the League',¹ was to strengthen the tendency, apparent in the interpretative resolutions of 1921, to stress the flexible character of the obligation by introducing discretionary elements which were absent from the text of Article 16, paragraph 1, of the Covenant.

The period of 1925-30, in spite of its various appellations, as the period of recovery or the period of fulfilment, is not free from resorts to war on the part of League members. The absence of active members of the League willing to bring to reason Bolivia and Paraguay, the belligerents in the Chaco War, is largely attributable to the return to power politics by the European powers. Argentina had already withdrawn her active collaboration, after her suggestions for extending the scope of League membership had received a far from cordial reception in the First and Second Assemblies. Admittedly, these proposals were not suitable for adoption in the form in which they were first raised. Yet the final committee report admitted that the technical barriers were surmountable,

¹ Collective Note to Germany by the other signatories of the Locarno Agreements, initialled October 16th, 1925.

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and that the real reasons for their unacceptability were bound up with 'the actual moral and political conditions of the world'. Only the express protest of the Swiss delegate prevented the inclusion in the Committee's report of a passage assigning the inexpediency of these proposals to the plea that 'the idea of the universality of the League is incompatible with the present conditions of the world'.¹ Similarly, Brazil had resigned her membership on account of the undignified struggle for Council seats which preceded Germany's admission to the League.

This period also witnessed the first post-War instance of a unilateral denunciation of treaty obligations, when Persia shook off the capitulations, which conceded consular jurisdiction and other privileges to foreigners in that country. No endeavour was made by the interested powers to induce Persia to submit her case to a procedure of revision within the framework of the Covenant. The lethargic attitude of the *status quo* powers in this case created a precedent of which other powers in similar circumstances did not remain unaware.²

Thus opportunity alone was wanting for the expansionist powers to dazzle the world with the real strength of the collective system. In the Far Eastern Conflict the aggressor followed the line of least resistance. The Japanese coup was assisted by the non-universality of the League (the U.S.S.R. had not yet joined) and the fact that the two greatest naval powers were not prepared to employ their fleets even in order to support the application of economic sanctions, and still less in a long-distance blockade, both measures which might have served the balance established in the Washington Treaties.³

If the Disarmament Conference, another notable attempt within this period, purported to be more than a sop to the Cerberus composed of world opinion and the countries unilaterally disarmed in accordance with the Peace Treaties, the endeavour could only provide evidence of a lack of insight, shown by the countries concerned, into the indispensable conditions of disarmament. These consist in a complementary system of effective machinery for peaceful change in order to induce revisionist States to lay aside their only means of achieving alterations of a *status quo* to which they are not

¹ See the present writer's *The League of Nations and World Order*, London, 1936, pp. 62 *et seq.*

² Compare, above, Chap. 16.

³ *ibid.*, Chaps. 15 and 17.

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prepared to subscribe indefinitely, and of collective security to serve as a guarantee for the *status quo* powers in order to reinforce them against unreasonable demands from the 'have not' States. An attempt to anticipate the consequences of a system providing equally for both stability and change was bound to end in failure. The outcome debased still further the value of the existing League currency and the image of the collective system believed to be engraved upon it.¹

Thus it becomes apparent that the period which follows only intensifies and brings into prominence a development whose threads can be followed back into the labyrinth of the incompatibilities of the Peace Treaties.

The Italo-Abyssinian War would have been inconceivable had it not been for the ambiguities of the Stresa Conference and the Italo-French understandings associated with the name of Laval. The action taken by Mussolini did not differ in kind from his bombardment of Corfu, or from the aggression perpetrated against China in Manchukuo. Only the Duce's legal pretexts were still flimsier than those used in the other conflicts, and the desire of Italy to wage war in order to construct an empire of her own was less deferentially masked, in view of the probable attitude of the Greater powers and the relative impotence of unorganized public opinion all over the world. The Governments of Great Britain and France, urged by the pressure of general indignation to take a stand, were either frustrated by great deficiencies in their information services regarding the likely effect of the sanctions applied, or the probable duration and capacity of Abyssinian military resistance, or else they purposefully restricted their concerted efforts to a demonstration of collective failure.² The reasons of state for this manoeuvre can be surmised, but are at present still beyond the scope of objective analysis. Whatever may be said in favour or against the policy adopted by the sanctionist powers, a fact which is essential to our thesis remains: that not even economic sanctions were applied by the members of the League comprehensively, automatically and simultaneously, as laid down in Article 16, paragraph 1, of the Covenant. In a sense different from that implied by Sir Samuel Hoare in his clarion call to the Assembly in 1935, the following passage may be applied

¹ Compare, above, Chap. 18.

² Compare for a more detailed analysis the present writer's 'The Italo-Abyssinian War', in *The New Commonwealth Quarterly*, 1935 (Vol. I), pp. 139 *et seq.*, pp. 231 *et seq.* and pp. 332 *et seq.*, 1936 (Vol. II), pp. 75 *et seq.* and pp. 254 *et seq.*

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in this instance, as in others preceding and following the Italo-Abyssinian War: 'The League is what its member States make it. If it succeeds, it is because its members have, in combination with each other, the will and the power to apply the principles of the Covenant. If it fails, it is because its members lack either the will or the power to fulfil their obligations.'¹

Yet more closely connected with the background of power politics was the attitude of the European States, in their capacity as members of the League, towards Hitler's successive violations of the Versailles system. It was hard to register high moral indignation at Germany's unilateral rearmament when it was stipulated in the Treaty of Versailles that the disarmament of the German Republic could be justified only as a preliminary measure 'in order to render possible the initiation of a general limitation of the armaments of all nations'.² Equally difficult was it to maintain indefinitely the unilateral demilitarization of the Rhineland or of any other zone, and at the same time to condemn any reciprocal concession to be made by Germany's neighbours as an unrealistic proposition. In either case, there was no moral justification to enforce the objective of the League, as outlined in the Covenant, of 'a scrupulous respect for all treaty obligations'.³ Hitler could turn to his own uses the peace-guilt complex of the *status quo* powers, since one, Great Britain, had never been entirely convinced of the wisdom of these clauses, and the other, France, was no longer in a position to arrest in its initial stages a development tantamount to a transference of hegemony in Europe. Shock tactics and week-end surprises, as facets of a policy with clearly limited and, at first, not unreasonable ends, proved superior to the cumbrous machinery of the Covenant and Locarno Treaties. This policy was strengthened by skilful use of the strategy of diversion, which enabled the powers of the Axis and later of the Triangle, working in parallel and probably concerted action, to restrict the *status quo* powers to choosing between passive submission to treaty infractions or risking a major war (or, to formulate the alternative in the idiom of less cautious observers, of calling the bluff of two countries which at that time were far from being prepared for such a contingency). Whatever the clue to the dictators' intentions, the undoubted effect was grievously to injure the prestige of the European

¹ *Official Journal*, Special Supplement No. 138, p. 44.

² Introduction to Part V of the Peace Treaty of Versailles, 1919.

³ Preamble, paragraph 6.

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democracies, to increase the insecurity of the smaller powers, and in general to annihilate belief in collective action and in the pledged word of Statesmen.¹

The adaptability of the methods employed by the expansionist powers became evident in the Spanish War, when their intervention on behalf of the rebels was thinly shielded behind the strange phenomenon defined by Noel-Baker as 'the totalitarian volunteers'.² From the beginning, it was scarcely possible to doubt that the war in Spain was an international war. As early as autumn, 1936, a note from the Portuguese Government, which had no Republican leanings, contains the remarkable passage: 'Why should we deceive each other? The civil war in Spain is an international war.'³ Had the Covenant been applied both in letter and spirit, even a civil war would have come within the competence of the League. For under Article 11, paragraph 2, it was permitted to each member of the League to bring to the notice of the Assembly or Council 'any circumstance whatever affecting international relations which threatens to disturb international peace or the good understandings between nations upon which peace depends'. Still more clearly was the League the appropriate organ, once the incontestable facts of foreign intervention were officially admitted by League members. In view, however, of the disinclination of Germany and Italy to participate in any collective action under the ægis of the League, the powers set up, within the framework of the non-intervention agreements, machinery completely unconnected with Geneva. The anomaly of such an arrangement has been defined by Lauterpacht: 'Inasmuch as Italy and Germany undertook not to supply the rebellious forces with munitions of war, these agreements consisted in an undertaking on the part of certain powers to refrain from committing an international illegality in consideration of the promise of other powers to refrain from acting in a manner in which they were entitled – and, according to some, legally bound – to act.'⁴ Assuming that the aims of the Covenant could be secured through the establishment of a separate organization, and that international delinquencies could be prevented by paring down the

¹ Compare on this period R. W. Seton-Watson, *Britain and the Dictators*, Cambridge, 1938, and F. L. Schuman, *Europe on the Eve?*, London, 1939.

² *Hansard*, Fifth Series, Vol. 318, December 19th, 1936, col. 1,069.

³ *The Times*, October 29th, 1936.

⁴ Oppenheim-Lauterpacht, *International Law*, London, 1937, Vol. I, p. 250, note 3.

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discretionary powers of all governments concerned, it could be argued that the ends merited the recourse even to extraordinary procedures. When the new course was inaugurated, it was maintained by the protagonists of non-interventionist policy that the aim of this device was to restore the civil nature of the war, an objective whose fulfilment would also have devolved upon the League, had it been concerned with the matter. Soon, however, the weight of the argument was shifted, and it was suggested that the purpose of non-intervention was 'to neutralize and localize this war and to prevent it spreading to Europe as a whole'.¹ It is doubtless possible to contend that there was a close similarity between a policy which purported to prevent the extension of a war and one which was directed at the restoration of its civil character. Nevertheless, there remains the significant contrast between the endeavours to eliminate an international conflict as such, by means of reducing it to a civil war proper, and those efforts tending to localize an international war. The latter objective has repeatedly been attained in the balance of power system; the former falls within the scope of a collective system proper. When, at a later stage, the limitation of the war area could only be achieved at the price of practically unlimited intervention on behalf of the insurgents this new halt between the rule of force and the rule of law, euphemistically termed 'collective neutrality', collapsed as completely as its predecessors, and its net result was the acquisition of new strategic positions by the expansionist powers.²

Whereas in this instance some members of the League tried to placate their self-respect and public opinion on the plea that the fact of aggression was doubtful in the case of intervention in a civil war, they could not use so convenient an excuse in the model case of the Sino-Japanese War. Here the aggressor acted openly, without consulting any of the rules of etiquette obtaining in Europe. It would be impossible either to doubt the identity of the aggressor or the international character of the war. Yet the result was about as negative as in the instance of the Spanish War. Although the Chinese appeal to the League expressly referred to Article 17, and was therefore indirectly based on Articles 12 to 16, the only direct action taken by League members in autumn, 1936, was to subscribe to a pious resolution in which they assured China of their 'moral support'.³ Again, it

¹ *Hansard*, Fifth Series, Vol. 328, col. 591.

² See Norman J. Padelford, *International Law and Diplomacy in the Spanish Civil Strife*, New York, 1939.

³ The League of Nations, *Official Journal*, Special Supplement No. 169, pp. 148-9.

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was left to a conference of the interested powers, outside the orbit of the League, to take any further action that might be deemed advisable. It is remarkable to find the Assembly condoning its inactivity by a reference to Article 3, paragraph 3, which states its competence to deal 'with any matter within the sphere of action of the League or affecting the peace of the world'. This article, the corresponding article defining the power of the Council (Article 4, paragraph 4) and Article 11 do not possibly lend themselves to the interpretation that they limit or supersede the more specific obligations undertaken by members of the League under Articles 12 to 17. What China has to expect from the Asiatic member of the Triangle has been outlined by the Japanese Foreign Minister with the explicitness which marks the diplomacy of this anti-League: 'As regards the present China affair, what Japan desires is a creation of a new order which has to secure permanent peace in East Asia; that is to say, the construction of a new East Asia upon an ethical foundation, in which Japan, Manchukuo and China, while each fully preserving her independence and individuality, will stand united and linked together for active collaboration and mutual aid along the lines of political, economic and cultural activities. It is the firm conviction of the Japanese Government that such a new order is not only absolutely necessary for the existence and healthy development of Japan, Manchukuo and China, but also conducive to the real peace and well-being of the whole world.'¹

The incorporation of Austria demonstrates to perfection the dynamic tactics upon which the Axis relied in Spain. Once more, the League members were paralysed by the attitude they had adopted towards the principle of national self-determination when Austria and Germany had decided to unite in 1919, and by the veto imposed on the customs union which these two countries had contemplated in 1931.

The success of the move invited its repetition in Czechoslovakia, the barrier blocking the political expansion of Germany in Eastern and South-Eastern Europe. Again the principle of self-determination served as pretext.² In spite of the fact that the Minority Treaty concluded with Czechoslovakia provided for its revision within the framework of the League, and the Locarno Agreements gave ample opportunity for the consideration of the Nazi claims, yet again a machinery for the settlement of an impending conflict was improvised outside of the League orbit. As the failure of the Runciman Mission and of the

¹ *The Times*, January 21st, 1939.

² See, above, Chap. 21.

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Munich Agreement is by now universally accepted, this interlude between an independent Czechoslovakia and the establishment of the German protectorates merits attention to-day, in the first place, because of the collapse of the French system of alliances, and, second, because of the anomaly apparent in the Munich settlement itself, even from the angle of power politics. The situation before Munich did not even faintly resemble a balance of power. Practically the whole world was united against two, or at the most three, countries. Nevertheless, these latter scored points to an extent which, in a system of power politics, normally only pertains to the fruits of victory in war. The position of inequality in strength and resources was, however, converted into one of formal equality through resort to the principle of the artificial balance, created in this instance by excluding from the Conference room one Greater power and one disputant, both of whom belonged to the same side of the 'balance'. The deficiency in resources and power on the one side was more than counterbalanced by the other's face-value estimation of its opponents' strength, however immaterial this might ultimately have proved. Thus the basis for a settlement was provided by the assumed or real readiness of the one side to begin a world war for the fulfilment of apparently limited objectives and the willingness of the other to sacrifice liberally for its avoidance.¹

A further illustration of this policy has been provided by the Italian invasion of Albania. In this instance, it appears to anyone who is less interested in forms than in essentials that the discrepancy between a community system proper and the decision of the Conference of Ambassadors in granting to one member of the League a special sphere of influence and political predominance in the country of a co-member of the same League exceeds in kind the discrepancy between the virtual protectorate subsequently established by Italy over Albania and the overt annexation of the country after the former nominee had proved less pliable than his sponsor had expected. This aspect of the League's system is also stressed in Judge Anzilotti's dictum in the *Anschluss* case: 'The legal conception of independence has nothing to do with a State's subordination to international law or with the numerous and constantly increasing states of *de facto* dependence which characterize the relation of one country to other countries.'²

¹ Compare the present writer's 'The Munich Settlement: The Issues at Stake', in *The New Commonwealth Quarterly*, 1938 (Vol. IV), pp. 237 *et seq.*

² *Publications of the Permanent Court of International Justice*, Series A/B.41, p. 58.

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What is the *common denominator* of these events, which, although distinct from one another, are strangely alike in their effect upon the League?

During the first decade of the collective system the *status quo* powers were paramount. So long as they were strong enough to prevent unilateral treaty denunciations and resort to armed force as a means of change, the collective system appeared to be a reality. Disturbances of tranquillity were exceptional, and the mere absence of war was mistaken for peace. Public opinion and even more experienced observers were deluded into assuming that a collective system could function without reliable machinery for peaceful change and the application of the principle of reciprocity either to disarmament or re-armament. The maintenance of the *status quo*, equivalent to French hegemony on the Continent, was mistaken for an effective League of Nations. As the potentially expansionist powers came to realize the situation, they proceeded along the psychological line of least resistance, which led, on the grounds of redress of manifest injustices, to modifications of the existing political situation at first regarded, even from the viewpoint of the *beati possidentes*, as peripheral and unimportant. At this stage the re-appearance of the 'have not' States on the world chessboard evoked an almost sympathetic response in those Statesmen to whom the conception of a collective system evidently appeared hallucinatory. It was hoped that the increasing strength of nations such as Italy, Germany and Japan might effectively contribute to the establishment of a new balance system and, incidentally, prove a useful counterpoise to the *block* formed by the U.S.S.R. Possibly this policy cannot be attributed to such a relatively long-term scheme, but is merely the expression of an undue complacency and state of saturation.

It has also been assigned to a manifestation of sincere pacifism, whose dogma does not allow even a menace to vital political and strategical points to serve as justification for a preventive major war. All these interpretations are permissible; the verdict, however, is one of *not proven*. At all events, this attitude tended to condone attempts at empire-building made by these late-comers in the imperialist arena.

In contrast, the *effect* of this development is clearly discernible. The Covenant is based on the conception of the indivisibility of peace (Preamble, paragraph 1; Article 3, paragraph 3; Article 4, paragraph 4; Articles 11 and 17) and on the principle that a violation of the Articles enumerated in Article 16 can only be impeded if a united

front is presented by League members – at least in so far as economic pressure is concerned. In the course of the process described above, there has been an increasing tendency for the centre of gravity to shift from indivisible to individual peace. Statesmen, to a considerable extent with the support of public opinion, reached the conclusion that it is simpler, safer and less costly individually not to obstruct the paths of the expansionist powers, to rearm to the best of their abilities and resources, in order to divert aggression to a more vulnerable victim, and, for the rest, to hope for the best. As the British Prime Minister said in the House of Commons on February 22nd, 1938: 'If I am right, as I am confident I am, in saying that the League as constituted to-day is unable to provide collective security for anybody, then I say we must not try to delude ourselves, and, still more, we must not try to delude small weak nations into thinking that they will be protected by the League against aggression and acting accordingly, when we know that nothing of the kind can be expected.'¹

The repercussions of such policy upon the small States, the 'consumers of collective security', have been profound. No longer could these States safely rely on the support of the more powerful *status quo* powers. Their anxieties were voiced by the Foreign Minister of Sweden, once one of the most loyal League members, as follows: 'In the present circumstances I think the situation necessitates our reckoning both with the League functioning according to the provisions of its Covenant at a critical moment and being prepared for it breaking up in conflicting coalitions. We must in this respect reserve our freedom of action.'² Again, according to the Swiss Memorandum of April 29th, 1938, that country 'will continue to collaborate with the League in all questions in which her status as a neutral country is not involved; but she considers herself entitled to ask that her absolute neutrality be explicitly recognized within the framework of the League.'³ In brief, the choice for those States lay between a policy of complete neutrality, if they were sufficiently strong and independent, and of *rapprochement* towards the expansionist powers with dubious results.

The common denominator of the whole development might perhaps be described as a process of *de facto* revision. Although nations may still profess their moral concern for international peace, and may even subscribe to pious resolutions, offer their mediation in accordance

¹ *Hansard*, 1938, col. 228.

² M. Cole and Ch. Smith, *Democratic Sweden*, London, 1938, p. 116.

³ The League of Nations, *Official Journal*, 1938, pp. 386-7.

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with Article 11 and resort to war only for certain objectives considered vital in the interests of power politics, it can no longer be expected that League members will fulfil their obligations under Articles 12 to 16 of the Covenant, irrespective of such considerations. This attitude found clear expression in the declaration made on behalf of the British Government in the Sixth Committee of the 1938 Assembly:

‘(i) The circumstances in which occasion for international action under Article 16 may arise, the possibility of taking such action and the nature of the action to be taken cannot be determined in advance. In consequence, while the right of any member of the League to take any measures of the kind contemplated by Article 16 remains intact, no additional obligation exists to take such measures.

‘(ii) There is, however, a general obligation to consider in consultation with other members of the League whether, and if so how far, it is possible in any given case to apply the measures contemplated by Article 16 and what steps, if any, can be taken in common to fulfil the objects of that Article.

‘(iii) In the course of such consultation each member of the League would be the judge of the extent to which its own position would allow it to participate in any measures that might be proposed and in doing so it would no doubt be influenced by the extent to which other members were prepared to take action.

‘(iv) The foregoing propositions do not in any way derogate from the principle, which remains intact, that a resort to war, whether immediately affecting any members of the League or not, is a matter of concern to the whole League and is not one to which the members are entitled to adopt an attitude of indifference.’¹

It is possible to argue that the *de facto* revision is a strange hybrid between fact and law. Yet, the reverse process is quite familiar to international lawyers. In a gradual transformation, usages of long standing crystallize into customary law, passing through innumerable stages, the distinguishing features of which are almost imperceptible. Although it would be quite erroneous to construe each infringement of international law as a sign of its alteration, the development outlined above presents a continuity which it is difficult to ignore, and there is no doubt that even a treaty may fall into desuetude.² With

¹ League of Nations, *Official Journal*, Special Supplement No. 189, pp. 24-5.

² Arnold D. McNair, *The Law of Treaties. British Opinions and Practice*, Oxford, 1938, pp. 373 *et seq.*

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the completion of such a process, a *de jure* revision has taken place. In order to forestall such an interpretation, in the British Declaration cited above the express reservation is made that 'the text, structure and juridical effect of the Covenant remain unaltered', and the less rigid interpretation of its obligations is only justified by reference to 'the special circumstances existing at the present time'.¹ Other countries – for instance, the U.S.S.R. (not to mention the victims of the various acts of aggression) – violently protested against this debasement of the collective system and still maintained that 'the Covenant as it is, or in a strengthened form, would in itself be sufficient to prevent war if the world realized that the nations undertaking to apply the Covenant actually would do so in fact'.²

The transitory nature of this development may also be illustrated by the work of the Reform Committee established by the League Assembly of 1936. Its function was to prepare as soon as possible a report which would indicate definite provisions whose adoption it recommended. In accordance with its terms of reference, in performing its task the Committee had to bear in mind the purpose of strengthening 'the authority of the League of Nations by adapting the application of these principles to the lessons of experience'.³ At the time when the Assembly passed this resolution, the failure of the sanctions experiment directed against Italy was regarded as *the* experience in the light of which the Covenant would be remodelled. While the Committee was engaged in this work, the pace of the expansionist powers quickened and the ensuing deterioration in the general situation lent to the Committee's work a grotesque unreality.

If the work of the Committee did not, and indeed in such circumstances could not, achieve practical results of major importance, it prepared the way for the formal separation of the Covenant from the Peace Treaties, a gesture which would have had a strong psychological effect in the era of the Weimar Republic, and which, coupled with other constructive efforts, might have served a useful purpose until 1936. In the atmosphere of September, 1938, however, it was inevitable that this 'reform' should appear as a symbol of League obsequiousness. In addition, dealing with various aspects of the Covenant, the *rapporteurs* produced memoranda which were illuminating from

¹ *L.c.*, p. 20, in note 1, p. 329, above.

² Note to the League from the New Zealand Government, July 16th, 1936, *Official Journal*, Special Supplement No. 154, p. 6.

³ *ibid.*, Special Supplement No. 151, pp. 65 and 68, and *Records of the Seventeenth League Assembly, 1936, Plenary Meetings*, pp. 39, 108, 109, 115 and 141.

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the research point of view. Further, the detailed discussions which took place in the Committee gave scope for an assessment of the strength of the various shades of opinion on the problem of transforming the *de facto* revision of the Covenant from a social into a legal reality. The supporters of such an alteration, who were led by the Chilean representative, favoured a revision of the Covenant which would change the League into a non-coercive and purely consultative body. But the resistance of those countries which either adhered to the orthodox interpretations of the Covenant or emphasized the exceptional nature of the difficulties sustained by the collective system, proved strong enough to impede for the time being the completion of the process of revision.¹

The war between the Allies and the Third Empire did not essentially change this situation. Poland did not consider it worth while to bring the Nazi aggression to the attention of the League; the British Empire and France merely notified Geneva of the fact that they were at war with Nazi Germany in view of the latter's attack on Poland.² Denmark, Norway, Holland and Belgium shared the same fate and nothing was heard from Geneva, apart from reports that the League officials were burning parts of the League's records and that this venerable institution itself was to be evacuated to a safer place in central France. Thus it would be possible to speak of the quiet liquidation of the political machinery of the collective system, had it not shown unmistakable signs of life in the case of the aggression of the U.S.S.R. against Finland. The League Assembly condemned the action of the U.S.S.R. and appealed to the members of the League 'to furnish Finland with all the material and humanitarian assistance which they can give and to abstain from all action that might weaken the powers of resistance of Finland'.³ The Council, associating itself with the attitude taken by the Assembly against the U.S.S.R., for the first time in the history of the League made use of the weapon of expulsion,⁴ a measure which so far had been kept discreetly in the background and which was, even as a threat in official League proceedings, only held out to Liberia in case of continued internal mismanagement.⁵ The attitude taken by Norway and Sweden in refusing

¹ Compare above, p. 330, notes 2 and 3.

² See *Official Journal*, 1939, pp. 386-8.

³ *Records of the Twentieth League Assembly 1939, Plenary Meetings*, p. 36, and *Official Journal*, 1939, p. 505.

⁴ *ibid.*, pp. 506 and 508.

⁵ Compare Eden's speech at the Seventy-ninth Session of the League Council, May 18th, 1934, *Official Journal*, 1934, p. 511.

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the Allied request for permission of passage of their projected expeditionary force,¹ and the fact that the Allies did not seriously dispute the right of these Scandinavian States to act in this manner,² seems to indicate that, from a legal point of view, the political parts of the League system are still in the twilight of an uncompleted *de facto* revision. However ambiguous the legal aspect may be, its political and moral side is plain. The political machinery of the League has proved to be a protracted failure of such proportions that the only value it can still claim consists in its use as an object lesson for those who wish to learn, peace-makers and public opinion alike.

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CHAPTER 24

THE VICIOUS CIRCLE

THE working of the Covenant in the practice of the League has brought to light severe deficiencies in its machinery. The organs established for the pacific settlement of political disputes had no authority to impose settlements on the parties. They are limited to recommendations. A further handicap lies in the exclusion from their competence of matters which belong to the sphere of domestic jurisdiction, and in the fact that the conciliators are appointed by their governments and thus are, in the first instance, representatives of their own countries and not organs of international justice. Still less satisfactory is the procedure provided in the Covenant for peaceful revision. It merely amounts to an embryonic machinery and presents a constant reminder of unfulfilled hopes and expectations. In the sphere of collective security, the distinction between compulsory economic and facultative military sanctions either means that the latter have to be improvised in an emergency or the former cannot be effectively applied if the need arises. Yet, when one passes to disarmament, it is not so much with Article 8 of the Covenant that one finds fault as with its non-application by the former Allied powers, apart from Great Britain, an attitude which can readily be explained by the fear and distrust which has permeated the world since 1919 in spite of the establishment of the League of Nations.

This leads to the deeper roots of the difficulties which the organization of the collective system of Geneva has only covered up, but not solved. The Peace Treaties of 1919 are a solution on the basis of power politics and had established positions of hegemony of one part of Europe over the rest of this continent. It may be said that these treaties could have been still harder without injustice to a country which has been the aggressor in three major wars within less than a century, but this argument misses the point. It may be that Cato's policy of dealing with an enemy is the only one which can be expected to prevent wars of revenge after the short spell during which

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the vanquished seeks recovery. Peace-makers, however, who are neither logical and ruthless enough to take this line, nor farsighted enough to establish and work a community system which rules out the possibility of renewed aggression, should not complain if their half-way house only produces a particularly tense system of power politics. Thus, from the outset, the issue was whether the community system of the League would get the upper hand over the system embodied in the rest of the Peace Treaties, or whether the rule of force would free itself from the paper shackles of Geneva. For a time, it looked as if the religious belief of the man in the street in peace and the League of Nations would force governments into line, and as if the Peace Treaties could gradually be adapted to the requirements and standards of the collective system. Yet this process was too slow to come at a time when it still might have evoked the expected psychological reaction on the part of the vanquished. Thus alliances, counter-alliances, balance of power and re-armament acquired again their traditional importance. Nevertheless, the League served as a useful screen behind which chancelleries and foreign offices entrenched their positions of power politics. In those circumstances, it became rather irrelevant whether this or that article of the Covenant was more or less perfectly drafted. Obviously, the fact that the League had not achieved universality, or that a technically required unanimity had not been achieved, provided handy excuses for politicians who were, anyway, not over-anxious to apply the Covenant. The incompleteness of the League machinery, however, never prevented action of the League in the rare moments when its members were inspired by a community attitude towards urgent issues.

The problem is a different one. How can States who regard their national interests as ultimate values be expected to agree to the limitation of the unanimity principle, the bulwark of their national sovereignty? Why should they entrust the command of their armed forces to foreigners, if the assumption is that either overriding interests of the international community do not exist or that nobody can be expected to act in accordance with them? Thus, it appears that national sovereignty is the root of the difficulties which international organization has to overcome.¹ For even if the proper League spirit permeated the collective system, it would be very hard to work the existing League machinery without a further surrender on the part of the member States of some of their sovereign rights, hampering an

¹ Compare George W. Keeton, *National Sovereignty and International Order*, London, 1939.

effective organization, which is meant to provide for stability and elasticity in international relations.¹ Yet the root problem seems to consist in the question why States and their governments are not prepared to take this decisive step. Again history provides precedents which might usefully be consulted. There have been other associations of States in the past which were confronted with exactly the same dilemma. The examples which antiquity and the Middle Ages offer² should not be over-estimated in their importance for modern international society. First, the nation State and the inter-State system of our own time are equally distinguished by *one* feature which separates them by a gulf from the societies of antiquity and the Middle Ages: the static character of these past societies and the increasingly dynamic quality of modern life. Second, close relations between States of the kind which are comparable with the League system were restricted both in antiquity and in the Middle Ages to closed societies from which the greater part of the world was excluded as barbarians or pagans. Our inter-State system, however, is world-wide and the most difficult problems of organization which have to be faced within this *one* activity area are the relations between societies kept apart by differences in civilization, culture, race and creed. Third, the fact that modern international society was, after the disintegration of the Christian Commonwealth of the Middle Ages, faced with anarchy and complete dissolution has left a deep imprint upon its component members.³ There is nothing that divides our time more from antiquity and the Middle Ages, from the standpoint of international organization, than the conception of the sovereign State. Macchiavelli's *Prince*, Bodin's *Six Livres de la République* and Hobbes' *Leviathan* are the literary reflex of a phenomenon of which no counterpart can be found in these earlier societies.⁴ As problems of world order in our time are so closely linked with the continued existence of the Leviathans, it is likely that the most valuable lessons can be derived from the comparison of the League experiment with similar attempts in the past. The closest resemblance is borne to those of the confederate pattern, i.e. associations of States which form a closer union among themselves without giving either to the individuals of whom they are composed the opportunity of directly influencing the policy of the League or to

¹ See Eden's speech at Warwick, January 17th, 1936, *Friends of Europe Publications*, London, 1936 (No. 33), p. 7.

² Compare E. A. Freeman, *History of Federal Government in Greece and Italy*, London, 1893, and Sir Alfred Zimmern, *The Greek Commonwealth*, London, 1931.

³ See, above, Chap. 1.

⁴ *ibid.*, Chap. 4.

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the composite organization any direct authority over the citizens of the member States.¹

The constitutional history of Europe and America offers a wealth of experiences which make it easier to understand the failure of the post-1919 attempts to establish the rule of law by means of a confederation.²

The Holy Roman Empire of the German Nation was a typically feudal State. The frequency of changes in the imperial dynasties was in itself a sufficient reason to preclude the development of a strong federal government, however this tendency may have been strengthened by the Italian policy of the German Emperors.³ Looking more at the reality of political forces within that Empire during the thirteenth and fourteenth centuries than at formulas of classification, we find a strange similarity between that German and the post-1919 inter-State system. Frederick Barbarossa's Proclamation of Public Peace (*Landfrieden*) of 1252 provided a kind of Kellogg Pact, which, in the end, proved equally ineffective. The twentieth-century inventions of pacts of mutual assistance, leagues and counter-leagues, were ingeniously anticipated and the results were equally akin, there the interregnum, here war and anarchy. Further factors which strengthened the centrifugal forces – apart from the weakness of the central government itself – were the ideological conflicts arising in connection with reformation and counter-reformation, the increasing rivalry between the *Hapsburgs* and their northern antipode and, last, but certainly not least, the growing power of a centralized France which proved to be a strong centre of attraction not only for the German borderlands, but even for Electors of Brandenburg and Kings of Prussia in their opposition to the Hapsburg Emperors.

As Hamilton and Madison put it, this State rested on the fundamental principle 'that the Empire is a community of sovereigns, that the Diet is a representation of sovereigns, and that the laws are addressed to sovereigns', and in their opinion this 'renders the Empire a nerveless body, incapable of regulating its own members, insecure against external dangers and agitated with unceasing fermentations in its own bowels'.⁴ A German observer, during the same century,

¹ An examination of the federal type will be found below in Part Three, Chap. 30.

² Compare, on the problem of an adequate classification of the League of Nations, the present writer's *The League of Nations and World Order*, London, 1936, pp. 104-5.

³ See Ricarda Huch, *Römisches Reich Deutscher Nation*, Berlin, 1934.

⁴ Alexander Hamilton, James Madison and John Jay, *The Federalist*, New York, 1787-8, Essay XIX.

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expressed the same idea more bluntly, when he classified the Germany of his time as an 'irregular body, similar to a monster'. Pufendorf diagnosed the deeper causes of this chronic illness which, by the Treaty of Westphalia, became part of 'European public law' as due to the following circumstances: (1) Lack of constitutional uniformity between the member States of the Empire. (2) Unequal distribution of power amongst them. (3) Unequal advantages from the existence of the Empire. (4) Lack of careful planning and elaboration of the fundamental principles of the imperial constitution. (5) Religious disunity. (6) The rights of the 'estates' (*Reichsstände*) to conclude alliances with foreign powers. (7) Lack of justice in the settlement of disputes between the members of the Empire. (8) Absence of a strong federal army. The famous philosopher sums up his criticism in the words: 'Such a State can form as little a body capable of life as a tailor can make an elegant suit when he has cut the cloth before knowing whether the suit was meant for a man or a woman.'¹ The author of this constitutional treatise suggests as remedies: (1) Restoration of internal concord by diminution of the powers of the overmighty subjects, the *Reichsstände*. (2) Limitation of the Emperor's power whose 'revenue and dominions in other qualities constitute him one of the most powerful princes in Europe' (*The Federalist*). (3) Abolition of the right of members of the Empire to conclude alliances with foreign powers. (4) Prevention of the intervention of foreign powers in the internal affairs of the *Reich*. (5) Elimination of the religious disunity amongst the *Reichsstände*.²

It must be admitted that Pufendorf showed wisdom in the analysis of the causes responsible for the disintegration of the Empire, and the remedies suggested by him appear equally sound. Progress, however, in the international as well as in the internal sphere is not only a question of goodwill and insight into the wrongs and deficiencies of a given situation. The fact that Pufendorf relied upon the reason and insight of the then mighty, and on their willingness to sacrifice momentary vested interests, shows why his work has remained of merely academic interests. His resignation finds expression in this very book: 'Private persons, in the cover of their four walls, make in vain good projects and courageous speeches, as long as those do not want to recognize their own advantage who hold in their hands the

¹ Samuel von Pufendorf, *Ueber die Verfassung des Deutschen Reiches* (1667), Berlin, 1922, pp. 105 *et seq.*

² *I.c.*, Essay XIX, in note 4, p. 337, above, and *I.c.*, pp. 111 *et seq.*, in note 1, above.

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government of the State thanks to the chance of birth which sooner grants unmerited power than wisdom.¹ This philosopher and writer on international law, as a good many before and after him, did not find the contact with the progressive forces of his century. He failed to provide these movements in his own country with the intellectual weapon which they were lacking. In the absence of conscious planning, translated into political power, history proceeded on 'natural' lines, i.e. by war and revolution. Thus it is to be explained that not a man like Pufendorf, but Napoleon gave his imprint to the following period in the development of German federalism.

The Rhine Confederation is a model example of how federalism can be made subservient to power politics and interests of imperialist domination.² This aspect deserves to be elaborated; Napoleon, the protector of the confederation, and France remained outside the confederation. As in the case of the Corinthian League, the hegemonial power was stronger than any combination amongst the member States. As soon as this *societas leonina* was established, the pact became a mere scrap of paper: Napoleon admitted new members to the confederation without consulting the member States; he acted without a constitutional basis as the representative of the confederation and even conducted agreements on behalf of member States concerning their frontiers with other States. This confederation served as a glacis in the defence of the French Empire and, furthermore, it assisted in augmenting the Napoleonic armies out of the reservoir of the population of the Rhineland. The organization of this separatist group as a confederation, modelled on the experiences of an earlier attempt in the same direction in 1658, enabled Napoleon to maintain French hegemony by diplomatic means and to keep the rulers of these States in check by a skilful system of recompositions and threats. When the European coalition swept away the Napoleonic Empire, this appendage disappeared with its protector.

In the Preamble of the Constitution of the Germanic Confederation of June 8th, 1815, the signatories assure each other of 'the advantages which would result from their firm and perpetual union for the security and independence of Germany and the repose and equilibrium of Europe'.³ Article 1 of the Constitution expressly guarantees

¹ *I.c.*, p. 128, in note 1, p. 338, above.

² *Corpus Iuris Publici Germanici Academicum*, Tübingen, 1825, pp. 367 *et seq.*, and H. Triepel, *Die Hegemonie*, Stuttgart, 1938, pp. 532 *et seq.*

³ *Corpus Iuris Publici*, pp. 450 *et seq.*, and L. von Dresch, *Öffentliches Recht des Deutschen Bundes*, Tübingen, 1820.

the unimpaired sovereignty of the member States, and this principle is further illustrated in the *Schlussakte* of 1820, according to which delegates are exclusively responsible to, and dependent on, their own governments. The direct relations between the confederation and the subjects of the member States are limited to cases of denial of justice and revolutions when the confederation, in the spirit of the Holy Alliance, gives assistance to hard-pressed governments. The principle of non-intervention in all other cases is expressly laid down in Article L iii of the *Schlussakte*. In the Diet, in spite of a nominal hierarchy of votes, in all important issues unanimity is required in fact. The Constitution excludes resort to war between its members, and provides an elaborate procedure for the pacific settlement of disputes between member States. Provision is made for mutual guarantees and protection as well as for military execution against a member State which does not comply with a resolution of the Confederation. Finally, the *Schlussakte* excludes withdrawal from membership. This means in reality only that a *legal* secession is not possible. Such a clause could not, however, prevent Prussia from breaking up the whole Confederation when it was out-voted in the Diet in the course of its rivalry with Austria. Why do we pay so much attention to this Constitution which, after all, was a complete failure? The reasons for this failure lie deeper than in any defects of machinery. This confederation found its political justification in the maintenance of the *status quo* against the aspirations of Prussia, and in the application of the principles of the Holy Alliance against German liberalism and nationalism. It was directed against the most vigorous and progressive popular forces. Therefore, it had to cling to the representatives of an outworn State sovereignty and could not draw on the inexhaustible reservoir of mass support. Thus, dynastic sovereignty triumphed and the Germanic confederation perished. An unknown author puts this question in a way which has undiminished value in our own time: 'The member-State is in itself the highest aim which comes before anything else, and to which, in case of necessity, everything has to be sacrificed. For there is no duty which goes beyond the highest aim, i.e. is effective beyond it. Nothing can be altered in this state of affairs by agreement. To renounce this highest aim or one of the means which are necessary to achieve it, or may be necessary in certain circumstances, is an impossibility and the self-limitation of sovereignty in the relation to other sovereignties is impossible.' And the writer continues: 'The greatest of these sectional interests consisted,

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however, in that the theoretical renunciation of sovereignty should not become practical.¹

It is noteworthy how the existence of strong and apparently unassailable sectional interests induces the writer of this book to give as an explanation a whole ideology of sovereignty. This spectacle repeated itself in our own time when a 'glorified Postal Union' attempted to establish world order,² and 'realists' mocked 'the common fire ordinance' (Herr von Manteuffel), thus holding up to ridicule merely their own parochial attitude and lack of vision. These forces of reaction could have been overcome by an alliance between the German federalists from above and the national-democratic masses. Although Bismarck, as his conversations with Lassalle on the introduction of the principle of general, equal and direct representation in the *Reichstag* show, played with the idea, he preferred another method to convince the 'realists': the super-realism of blood, iron and success. And we know that nothing convinces 'realists' more than success. While the later developments of Germany's integration have led her towards forms of federalism, which will be discussed as an alternative to the pattern of confederation at a later stage, the early stages of Swiss and Dutch statehood indicate rather striking similarities between these forms of inter-State collaboration and the League of Nations.

Switzerland as a political unit has its origin in the Old League of High Germany, which formed part of the Holy Roman Empire. The Perpetual League between the three Swiss Forest Communities, established in 1291, received its strength and cohesion from its defensive character 'against all and singular who shall intend violence, molestation or injury against them or any one of them in persons and goods by contriving any ill whatsoever'. This confederation was 'the offspring of the disintegrating forces of the Empire – a living proof of its incoherence'.³ If we are told to-day that Switzerland is the model for a disrupted Europe or the world at large, it is well to remember the chequered history of this experiment and the exceptional conditions in which it succeeded after centuries of failures, feuds and intrigues within and from without.

It may even be argued that this association might not have stood the

¹ *Principien der Realpolitik*, Stuttgart, 1859, pp. 72-3.

² Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, London, 1936, p. 281.

³ W. Wilson, *The State*, Boston, 1898, p. 251. See for the text of these constitutions A. P. Newton, *Federal and Unified Constitutions*, London, 1923, pp. 41 *et seq.*

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strains of its internal dissensions, political and religious, if there had not been overriding interests on the European plane in its existence and independence. The treaties concluded with Austria (1474) and France (1516) prohibited the participation of Switzerland in wars in which one of these European powers, then the two main adversaries, was involved. It was an essential element of the gradually emerging system of balance of power in Europe that 'Switzerland must remain in future as she has been in the past, the trusted guardian of the passes of the Alps'¹ and that 'the central fortress of Europe' did not fall into the hands of any other European State. Thus, for centuries, Switzerland existed not so much by virtue of its own strength, but it was 'sustained by the international situation, a foundation which is, however, extremely solid'.² When Napoleon smashed this European order and established his domination, the *Eidgenossenschaft* was transformed into the *République Helvétique*, a strongly centralized unitarian State on the model of the French constitution of 1795. Switzerland, whose 'independence' was hitherto guaranteed by France, became a French vassal State, disrupted by violent internal quarrels. Again Napoleon intervened, and in 1803 his 'mediation' led to the adoption of a new constitution establishing a confederation, based on the sovereignty of the nineteen cantons. Thus history furnishes another example of a confederation which was achieved, not because a people wanted it, but because the '*Mediateur de la Confédération suisse*' regarded this constitution as the most suitable from the standpoint of his own interests. To put it in Napoleon's own words: '*Nous statuons ce qui suit!*' When Napoleon was defeated at Leipzig, Switzerland proclaimed her neutrality, but had not the strength to prevent the Allies from invading France through Switzerland.

It was left to the Peace Conference of Vienna to lay down the framework of Switzerland's permanent neutralization within which the tender plant of Swiss federalism grew to its present strength. Switzerland was not a party to the Declaration of the eight powers, signed March 20th, 1815, but she acceded to it on May 27th, 1815, and thus acquired the rights and undertook the obligations connected with the special position granted to her in 'the general interest' of Europe. It is worth stressing that this relatively comfortable external position led to a strengthening of the centrifugal tendencies in

¹ Swiss Memorandum of February 8th, 1919; D. H. Miller, *The Drafting of the Covenant*, New York, 1928, Vol. I, pp. 429 *et seq.*

² H. von Treitschke, *Politics*, London, 1916, Vol. I, pp. 32-3.

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Switzerland. The Constitution of August 17th, 1815, resembles the pattern of the Germanic Confederation. The sovereignties of the (by then) twenty-two cantons were restored; the representatives of the cantons forming the Diet voted in accordance with the instructions of their local governments; a detailed procedure for the settlement of disputes between the cantons was laid down in the Constitution, which also provided for a militia composed of cantonal contingents. The civil war of 1847, in which the seven Roman Catholic cantons (the *Sonderbund*) attempted to secede from the confederation, ended with the defeat of the separatist side. The Constitution of 1848 established the federation as such as distinct from the cantons and transformed Switzerland into a composite State on the federal pattern.

To turn to the Netherlands, the rebellion of the Provinces of the Netherlands against the King of Spain led to the Union of Utrecht, concluded on January 23rd, 1579.¹ It was the object of this Union of the United Provinces of the Netherlands to secure common action against the common danger of Spanish tyranny, by the organization of joint forces under a common authority against an external foe. 'The said Provinces made an alliance, confederation and union together, as by these presents, they are allied, confederated and united together forever to remain in every way and manner as if all were but one single Province' (Article I). There were tendencies noticeable in the act of Union which, if carried to their logical conclusion, might have given it the necessary cohesion. For example, not only the *Stadtholders* of the provinces, together with the magistrates and chief officers of the provinces and towns, but also the companies of burgesses, fraternities and official bodies were bound to take an oath on the articles of the Union. Yet the few instances of this kind which can be quoted are heavily outweighed by safeguards in the opposite direction, in favour of the principle of parochial sovereignty. There were all the usual guarantees of mutual assistance, cumbrous procedures for the peaceful settlement of disputes between the members of the Union and for common defence, in accordance with patterns which equally failed both in the case of German and Swiss Federalism. It would, however, give a wrong impression if one attempted to understand this confederation by merely paying attention to the text of the Union of Utrecht or to the resolutions adopted at the 'big meeting'

¹ Article 1. See for the text Newton, *l.c.*, pp. 43 *et seq.* See also Joest A. van Hamel, 'Federating as a Motive Power towards Peace', in *Transactions of the Grotius Society*, London, 1938 (Vol. 23), pp. 1 *et seq.*, and W. R. Bisschop, 'A Commonwealth of European States', *ibid.*, 1940 (Vol. 25), pp. 1 *et seq.*

(*Vergadering*) of 1651. For this federal experiment is one of the rare Continental examples which is mainly based on customary law.

The main organ of the Republic was the Generality of the Estates, the permanent organ of the deputies of the provinces. Each province had one vote and the delegates were bound by instructions. The representatives of the provinces were themselves elected by provincial organs composed of delegates of the towns and nobility. The competence of the Generality of the Estates was limited to the decision on peace and war, the conduct of war, questions affecting fortified places and garrisons, and the settlement of disputes between the provinces.

The financial burdens were borne by the provinces in accordance with agreed quotas, and the direct sources of income of the confederation were limited to excises and moderate import and export duties. A Dutch jurist who has a special claim to be heard on the federal experiment of his own country, van Hamel, describes the reality of this Union in rather gloomy colours: 'The *Stadtholder* was expected to act as an internal peacemaker. In practice, the provinces declined to recognize any institution or paramount authority to which they should submit against their will. In the end, federal military action has sometimes taken place against separate towns. It remained out of question, however, against provinces themselves, no matter how recalcitrant.'¹ The Provinces insisted on the unanimity principle. As the same author reports, 'in several cases, Statesmen took the way out by falsifying decisions, or by leading opposing delegates by the nose, in order to prevent a deadlock which might have been fatal to the general interest'. That this confederation survived as long as it did was due to another factor which is so often of a decisive character in associations of a federal or confederated character: the hegemony of one of the member States. In the case of the United Provinces of the Netherlands, this function was fulfilled by the province of Holland, at least equal in number of population, and in economic as well as military strength, to all the other provinces together.

The unanimity principle gave Holland the chance of preventing undesirable resolutions in the Generality of the Estates where it had only one of the seven votes. The fact that this organ met at The Hague was of equal importance, as here also the estates of Holland met and the smaller provinces accustomed themselves to postpone decisions until Holland's attitude to important questions had been ascertained.

¹ *L.c.*, p. 9, in note 1, p. 343, above.

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In addition, the *Ratspensionaer*, the General Secretary of the Generality of the Estates, was customarily a high official of the administration of the province of Holland. In spite of the fact that he had no formal vote, he had all the instruments of a versatile executive at his disposal, in order to influence and 'guide' the deliberations of this body. Yet this hegemony of Holland found its counterpart in the *Stadtholder*, particularly since the House of Orange succeeded in the accumulation of the offices of various *Stadtholders*. While these offices gave them military and political influence within the provinces which had elected them, the Generality of the Estates added the command of the army and the navy. Furthermore, the House of Orange was regarded by the greater majority of the people as the saviour and protector of the liberty of the Netherlands, and enjoyed a popularity amongst the lower classes of the population, with which the representatives of Holland, the vested commercial and financial interests, could not compete. The fact that neither Holland nor the *Stadtholder* could achieve supremacy, led to frequent conflicts between the competing aspirants, and increased the elements of instability in an already rather delicate structure.

A confederation of this type, which only temporarily worked under the pressure of external danger, was, in the words of Grotius, kept from being ruined by the vices of its constitution only by the hatred of his countrymen against the Hapsburgs. Hamilton and Madison foretold the fate of this association when in 1787, they summed up their impressions of the Union of Utrecht: 'A weak constitution must necessarily terminate in dissolution, for want of proper powers, or the usurpation of powers requisite for the public safety.'¹ The latter happened in those crises which the Union survived, and the former when it was faced with French invasion. After liberation from French domination, the people of the Netherlands short-circuited the painful experiences of Switzerland and Germany by the formation of a United Kingdom, which has enabled it to achieve a remarkable degree of national unity and strength. Again, the trend towards federalism was part of a secessionist current. It owed such vigour as it had to the external pressure of a common enemy. The confederation which was the outcome of this development suffered from the inherent weakness of any composite organization which is based on the hardly restrained sovereignty of its member States and on the unanimity principle. The Union of Utrecht was only a transitory stage, not on

¹ *I.c.*, Essay XX, in note 4, p. 337, above.

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the road towards a federation, but towards a national and United Kingdom.

The experiences of the United States of America during the period of 1776, the declaration of their independence, and the adoption of a federal constitution in 1787 confirm all the lessons which can be derived from the European counterparts of this confederation. The thirteen States were divided by mutual jealousies, tariff wars further disrupted unity,¹ and the effect of this situation on foreign policy was, to quote Hamilton, that 'the treaties of the United States, under the present constitution, are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures'.² There was similar confusion in the field of finance. During the War of Independence, the confederate government had raised loans within the country, and also from France and Holland, but when some of the States failed to vote the quotas allotted to them in the 'indissoluble compact' the confederate government lacked the power to coerce the member States. 'It was a body richly enough endowed with prerogatives, but not at all endowed with powers.'³ In the words of Chief Justice Marshall, the United States during that period were 'divided into independent States, united for some purposes, but in most respects, sovereign'.⁴

Bolívar's attempt at the creation of a Latin-American Confederation failed before the scheme could ever be put in operation. The father of this idea himself compared the Congress of Panama, at which the plan was discussed in 1826, to the madman who, seated on a rock, believed that he was directing the movements of the ships in the surrounding ocean, and on his deathbed he exclaimed: 'I blush to say it: We have achieved nothing but independence at the cost of all other things.'⁵

In all these cases, the confederate system worked to a certain extent under the pressure of external enemies, so long as unity was the only chance of survival and safety. Temporary alignments of this sort are not uncommon even between completely sovereign States, but then they are classified under the more customary name of 'alliances'.

¹ See John Fiske, *The Critical Period of American History, 1783-1789*, Boston, 1888, p. 168, Wilson, *l.c.*, p. 460, and James Brown Scott, 'An American Conception of International Organization', in *The New Commonwealth Quarterly*, 1939 (Vol. V), pp. 183 *et seq.*

² *l.c.*, Essay XXII, in note 4, p. 337, above.

³ Wilson, *l.c.*, p. 459.

⁴ *Sturges v. Crowninshield*, 4 Wheat. 122, 192.

⁵ F. A. Kirkpatrick, *Latin America*, Cambridge, 1938, pp. 102-3 and 105-6. See also J. M. Yépes, 'Bolívar et Wilson. Le Traité de Panama de 1826 et le Pacte de la Société des Nations de 1919', in *Die Friedenswarte*, Zurich, 1940 (Vol. XV), pp. 37 *et seq.*

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When the specific purpose for which the common front has been created ceases to exist, or when one of the partners considers that its interests are better served by a termination of the treaty, or even a complete change of front, the agreement comes to an end either by a mutual understanding or by unilateral action. Common organs of a confederation may be responsible for the impression that a union of this kind amounts to a more permanent and closely knit organization. The lack of governmental and executive competences and powers, however, invariably reduces a confederation to all the vicissitudes of an alliance, and the loyalties of the citizens remain attached to the States, which keep them under their direct and exclusive control. Thus the phenomenon of a confederation presents a vicious circle. The States of which it is composed are not prepared to agree to a permanent and effective limitation of their national sovereignty, so long as they regard their existence as an ultimate end in itself. The confederation as such, composed as it is of representatives nominated by the national governments, has no direct access to the citizens of the member States. It can hope favourably to compete for the loyalty and devotion of the individual only if the emotional appeal of the States themselves is limited, and they appear to public opinion merely as the strongholds of sectional and vested interests. This situation enabled the peoples of Switzerland, the Netherlands and of the United States to transform their confederations into federations. Yet, it would have been doubtful whether even their growing national consciousness would have been sufficiently strong to bring about this integration, if the requirements of industrial and commercial development had not led to an alliance between these popular aspirations and the expansive forces of nineteenth-century capitalism.¹ In Germany, the centrifugal tendencies were so strong that this combination alone did not succeed in achieving this object; it had to be linked with the political and military power of Prussia; and Bismarck established the German federation on the battlefields of Germany, Bohemia and France. Any confederation which surpasses the orbit of a nation is faced with the difficulty that it has to evoke emotions stronger than those of the nation States which are not only endowed with power, but also with the spiritual armour of vigorous nationalism. Conceptions such as peace, international order, the outlawry of war, collective security have so far not proved strong enough rallying points for movements

¹ Compare C. A. Beard, *An Economic Interpretation of the Constitution of the U.S.A.*, New York, 1921.

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and parties to force their governments to take a leap from the international society of power politics into an international community. It appears, therefore, that here lies the main problem. International affairs are domestic affairs and are finally decided by the initiative or passivity of the citizen, the ultimate unit on which the international society is based. The continuance of sovereign States is only the reflection of the more fundamental problem that either a more embracing community spirit does not exist within the States of which the confederation is composed, or that it has at least so far failed to impress governments with the need to act in conformity with its standards of conduct.

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CHAPTER 25

PROBLEM OF INTERNATIONAL PLANNING

lusion that fact-finding in international relations is a scientific
tion, free from unconscious valuations and judgments, be-
plainly evident when one explores the variety of attitudes
by writers and experts on subjects such as power politics
perialism. Even if the period between 1919 and 1939 is
l and attention is paid only to the pre-1914 society, qualified
s react with strange disharmony. The types of approach may
antagonistic as open defence asserting that power politics
essarily predominant in international relations, and an equally
condemnation of the international anarchy which could be
me by a concerted effort on the part of peoples and govern-

In between there are all sorts of possible lines which can
are being taken, ranging from mere escapism regarding these
rous' subjects to the rather startling, but not uncommon,
nsciousness in which the policies of other countries are properly
ed, but one's own country mercifully excepted from this
ent.

s international relations are an ideal field both for ideologies
opias. These terms are used in their proper sociological mean-
thout any malicious implication which can so easily be con-
with these notions. While an ideology is 'the outlook, inevit-
ssociated with a given historical and social situation, and
ltanschauung and style of thought bound up with it',¹ a utopia
dea which seems to be unrealizable within the framework of
sting political, social and economic order.² Naturally, there
rder-line cases in which ideologies form more or less conscious
es of the real nature of a situation³ and utopias are not only
ture truths, but also include dreams which can never be

¹ Karl Mannheim, *Ideology and Utopia*, London, 1936, p. 111.

² *ibid.*, p. 177.

³ *ibid.*, p. 49.

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achieved. Yet a fairly safe test is provided for the control of these extremes, if it is remembered that 'it is always the dominant group which is in full accord with the existing order that determines what is to be regarded as utopian, while the ascendant group which is in conflict with things as they are is the one that determines what is regarded as ideological'.¹

In this turmoil of ideologies and utopias, a detached approach to the problem of international planning is not easy, bound up as this question is with political strife, and, therefore, a subject not favoured by those who seek refuge from the storm in the safe harbours of fact-finding or of uncontroversial subjects.

A simple way out of these difficulties is to exclude international relations entirely from the sphere of rational planning by the assertion that international government is an art and not a science, 'and it is abundantly true that progress towards it will have to be made by trial and error, perhaps particularly by error'.² In the words of Karl Mannheim, 'the sociological roots of this thesis are immediately evident. It expresses the ideology of the dominant nobility in England and Germany, and it served to legitimize their claims to leadership in the State, the *je ne sais quoi* element in politics, which can be acquired only through long experience, and which reveals itself as a rule only to those who for many generations have shared in political leadership, is intended to justify government by an aristocratic class'.³ In addition, the lack of planning, and the apparent impossibility of offering to public opinion a workable and practical alternative to the existing anarchy, in itself strengthens the tendencies for the maintenance of the prevailing system of *laissez-faire*—that is, power politics in the international sphere. A similar function is fulfilled by failures of ill-conceived or inadequate schemes as have been witnessed both in the pre-1914 and post-1919 periods in ever-increasing number. The work of The Hague Peace Conferences did not prevent the first World War and neither the World Disarmament nor World Economic Conferences essentially affected re-armament and economic crises. The disillusionment which inevitably followed every time hopes were raised in vain could produce only *one* result: to convince public opinion of the inevitability of international competition, anarchy and power politics. While there

¹ Karl Mannheim, *Ideology and Utopia*, London, 1936, p. 183.

² Sir John Fischer Williams, *Aspects of Modern International Law*, London, 1939, pp. 4-5.

³ Mannheim, *l.c.*, p. 107.

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is no evidence that any individual in a leading position consciously aimed at such a result, objectively the sincerity or insincerity of the persons concerned is immaterial. What counts is not the motive, but the result, and the effect is still more devastating if it is brought about by men who honestly tried, but failed, than if these failures can be attributed to cynics and crooks who consciously misled their own nations.

In this situation, the student of international relations can fulfil a constructive function. He can explore the possibilities of alternatives to the present chaos. Obviously, questions of change and transformation are issues on which varieties of opinions may be held and there is always more than *one* solution for social dilemmas. Therefore, it seems that the first task consists in a survey of the available patterns and an analysis of the conditions on which their realization depends. Experiences such as the League of Nations offer a warning example that research has to devote itself also to a destructive task, if it is to be more than a cover of ideologies. It must expose without mercy the shortcomings of half-way houses and compromises which lead back merely to the anarchy for which they are supposed to provide a remedy. The post-1919 period has shown what results were achieved by the prevailing 'realist' attitude on the part of authorities in the field of international relations. Minor successes of the League and organizations such as the International Labour Organization or the machinery under the International Opium Convention were magnified and collective failures minimized or left unexplained, in order not to harm the tender plant of international order, while constructive planning was discouraged as 'unscientific'. As long as schemes for comprehensive machinery in the sphere of peaceful change and collective security did not exist, it was suggested that plans of this sort *could* not be devised. When they were put forward, the same experts declared that governments would not consider them, and, therefore, they were merely utopian and a waste of time. While this attitude was adopted at a time when Hitler was still so weak that Germany might have been prepared to co-operate in any system of international order, and Mussolini had not yet attacked Abyssinia, the mental outlook of the same expert has undergone a remarkable change in the course of the last few years. By the time the Allies were involved in this war, innumerable drafts for federal constitutions were at first privately circulated and then made available to the public at large,

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and suddenly the world had become ripe for changes which did not appear to be possible in more normal times.¹

An explanation of this strange phenomenon is not difficult. In the first place, on the surface a Peace Conference provides enormous opportunities. The victorious side seems to have an amount of freedom of decision which is denied to the negotiators at conferences which take place in more normal circumstances. Yet the havoc and destruction of a totalitarian war, the despair of hours of waiting and reverses, the feelings of retribution and revenge caused by the unavoidable and unnecessary brutality of the enemy makes one wonder whether this opportunity is really so marvellous, and whether the governments, even if they wished to establish an international community, would be sufficiently free and independent from their own public opinion to reconstruct the world or Europe in a spirit of detached and courageous planning. It is well to remember Harold Nicolson's warnings: 'Having been present at the Paris Peace Conference, and having watched with dismay how day by day our brave ideals became bogged in the mud of circumstance and in the marshes of vested interests, I am convinced that no good peace can ever be negotiated immediately after a war of world magnitude.'²

Secondly, a crisis of this magnitude requires explanation. It must have a deeper meaning which justifies the amount of sacrifice and slaughter unavoidably connected with a major war. Slogans such as 'the war to end war' or 'the war for democracy' sound hollow, as any programme which is only a repetition of hopes held out and not fulfilled after the first World War. Then a confederation was to outlaw war; this time a federation might achieve what was attempted in vain in 1919. While some may honestly hold this view, others may seize it as an ideology, a *fata Morgana* which the wanderer in the desert is never to see.

Thirdly, there are those who are always in search of a new faith and who, after the breakdown of their belief in the League or disarmament, have found a new quasi-religion in conceptions such as Federal Union.

In this situation, research can fulfil an additional function. It

¹ The views expressed in these paragraphs are based on extensive discussions and a vast amount of correspondence which the present writer, in the course of his work in the New Commonwealth Institute, carried on with experts and teachers on international law and relations, both in this country and abroad. Yet even in those days there was a growing number of experts who realized the futility and sterility of this attitude.

² 'Allied War Aims', in *The New Republic*, New York, 1940, p. 273.

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can subject these schemes both to a transcendental and immanent criticism. Transcendental criticism deals with the assumptions on which those plans are based: While it may not be possible to argue about major premises, such as the value of peace, justice, nationhood or free trade, it is necessary from the standpoint of research clearly and consciously to elaborate the assumptions, often left hidden and inarticulate by the drafters of such schemes, on which their work is based, and to discuss the chances of realizing the projects in the light of social forces likely to oppose or to further the idea. Immanent criticism has as its object the working out of the shortcomings of plans from all possible points of view, but without challenge to the major assumptions on which the plans are based or which they take for granted. At a time when intellectuals not directly engaged in the effort to win the war have swung over from an extreme positivist attitude and adulation of fact-finding to the other extreme of constitution-making, it seems apposite that at least a few concentrate on the not always pleasant task of reading the host of plans committed to patient paper and to digest the multitude of ingenious suggestions into a typology of patterns from which the makers of the coming peace and the bewildered citizens may take their choice.

In undertaking this task, which is only too likely to raise an outcry from hurt and misinterpreted prophets and to create a united front of disapproval, three guiding principles are suggested.

First, insight into the system of power politics which has so far prevailed makes it self-evident that confederations of the type of the League of Nations or isolated attempts at economic collaboration or disarmament are mere patchwork and bound to lead to disappointment and failure. As Gilbert Murray said in 1914, 'we must learn to agree, we civilized nations, or else we must perish. I believe that the chief counsel of wisdom here is to be sure to go far enough'.¹ The time-honoured argument that 'what is necessary is not a paper plan, but such changes which are supported by public opinion or which, in accordance with experience, are necessary for a better functioning of an already existing system'² sounds rather antiquated at a time when for war purposes the most revolutionary changes are demanded by governments and willingly sustained by their peoples. True, as it is, that it requires the utmost resolution and

¹ Gilbert Murray, 'Thoughts on the War', in *The Hibbert Journal*, 1914, p. 77.

² C. K. Webster, 'Vorschläge für eine Revision der Völkerbundssatzung', in *Völkerbund und Völkerrecht*, Berlin, 1934, p. 80.

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the limits of leadership to win a major war, without similar exertions a lasting peace cannot be won either.

Second, nothing short of the establishment of an international community over as large an area as possible can achieve this object. Only an international organization, 'in which all peoples or nations, while keeping their previous individuality and particularity, would be able to live together held by a common bond of mutual and universal obligation, firm enough to preclude war and loose enough to guarantee freedom',¹ can meet this requirement.

Third, the problem of planning consists in bringing about *all* changes which are necessary. This, however, implies that only such alterations are to be aspired to which seem absolutely indispensable; for the social forces opposing change are always so strong that realistic planning must necessarily aim at the minimum and not the maximum of change to secure the achievement of the desired object. 'What we need to solve our problem is not the greatest possible change, but the least possible change, a change just sufficient to enable small-scale man to enjoy the material benefits of the large-scale world.'²

The experiences made with confederations in the past suggest lessons which may be applied with more profit in the future:

(1) The members of the community must be safeguarded in all their rights which the community grants them, against violation from within and without.

(2) The community needs for its own purposes adequate governmental and executive powers.

(3) The mere provision for the judicial settlement of disputes between members of the community is not sufficient. Procedure for legislation or quasi-legislation by organs endowed with discretionary power is indispensable in order to effect necessary changes.

(4) The members of the community must hand over to the community such means of self-defence as might seriously hamper the community in prevailing over any individual member or any possible combination amongst them.

(5) The degree of control of the community over its members and the competence of the community must depend on *one* test only: the minimum of functions and interference which is compatible with the proper working of the community system.

¹ J. Huizinga, 'Conditions for a Recovery of Civilization', in *The Fortnightly*, 1940, p. 400.

² Sir Alfred Zimmern, *The Prospects of Civilization*, Oxford, 1939, p. 25.

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(6) The community cannot create loyalties strong enough to counter-balance existing national loyalties without some measure of direct control over the citizens of the member States.

(7) A community can be based only on the principle of consent. While the unanimity principle would reduce it to impotence, the principle of equality and majority is compatible with a far-reaching protection of minorities and of individual member States in spheres which are not essential from the standpoint of the community.

If any international community of this kind could not come into existence until mankind is 'ripe' for it, the permanence of international anarchy and power politics would be assured. If any order of this sort is to be established at a Peace Conference, the psychological difficulties are admittedly formidable. The problem of retribution is apt to overshadow any other consideration, particularly as, for the moment at least, the feelings of the vanquished do not matter. Therefore, the chances of that opportunity depend on the self-restraint and firmness which the victorious side is able to exercise. If the victor applies as his standard the principle to take every measure which is required to prevent another major war, he is justified in doing so, both from the standpoint of the international community to be established and in accordance with the rules of power politics. No citizen of the Third Empire could complain about any peace treaty which would in any case be still infinitely milder and more decent than the treatment meted out by Hitler to countries under the Nazi yoke. The more such hardness proved itself not to be the result of revenge, and its purpose not to consist in the establishment of a new hegemony, but in the transformation of the international society into a community, the easier it would be for the vanquished to see the justice of such treatment. The test lies not in words, but in the degree of self-limitation of national sovereignty to which the victorious side submits itself in the interest of the new order. It may be that it is asking too much from any State and any nation to take such a long-range view of the problem. The fact that in this war the horrors compare with those of the last world war as does Nazi with Imperial Germany may rule out considerations of this sort. Understandable though any degree of violent and repressive action against the Nazi system and its remnants may be, the issue of power politics or international community will have to be decided at the Peace Conference.

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CHAPTER 26

THE ISSUES AT STAKE

THE history of the first World War proves how, in the course of its unfolding and widening in scope, the original objects gradually faded into the background and how new aims and vistas replace them.

If Hitler ever had a chance of winning the war, it would mean a further step on the road towards the mastery of Europe and the world. His objectives are limited only by the resources of the countries subject to his rule and the determination of those countries who have made a stand against him and thus fight, by their resistance, the battles of the world at large. In Hitler's own words, 'Germany, as it is to-day, is not a biological unit. It will be Germany only when it is Europe as well. Without power over Europe we must perish. Germany is Europe'.¹ 'Will you understand, sir, that our struggle against Versailles and our struggle for a new world order are one and the same; we cannot set limits here and there as we please. We shall succeed in making the new political and social order the universal basis of life in the world.'² 'I will compel the German people, who are hesitating before their destiny, to walk the road to greatness. I can attain my purpose only through world revolution.'³ 'We do not seek equality, but mastery.'⁴

If it is asked whether this war is a game of power politics, the answer has been given by Hitler. His politics are power politics *par excellence*, not limited to this or that concrete objective, but an attempt at hegemony which surpasses even the Napoleonic parallel. Therefore, it is immaterial whether Great Britain and France went to war in assistance of Poland because they were in honour bound to do so under their treaties of mutual assistance or because they realized that in any case they would have to fight at a later date

¹ H. Rauschning, *Hitler Speaks*, London, 1939, p. 34.

² *ibid.*, p. 78.

³ *ibid.*, p. 113.

⁴ *ibid.*, p. 149. See also Rauschning's masterly analysis of Nazism in his *Die Revolution des Nihilismus*, Zürich, 1938.

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for their survival. As long as a system such as the Third Empire exists, power politics in their crudest form continue to determine the course of world politics. If the Allies failed to stem Hitler's expansion, it would mean only that in the long run a wider world balance system would come into operation, in which the United States and the U.S.S.R. on the one and possibly Japan on the other side would have to join in fulfilling the function which has now fallen on the Allies and the Axis powers.

This situation implies also the answer to the further question whether this war can properly be called an imperialist war. In so far as Hitler is concerned, no description fits it better. If this terminology is applied to the cause of the Allies, it may be permitted to ask whether any country which is either neutral or is a small power fighting together with Great Britain is in fear of British domination. It may be said that though this cannot be maintained, nevertheless, this country holds a vast colonial empire which is not bound to it by the mere tie of consent, but is ruled on a basis of hierarchy and subordination. Even if this be admitted, there seems to be a difference of degree between the oppression practised by the Third Empire in all countries subjected to its sway and the colonial empire of Great Britain. How far this difference goes would become evident if the inhabitants of these territories were faced with the alternative whether they would prefer British rule or a Nazi régime. If it is suggested that they want neither, the attitude taken by Ghandi and Pandit Nehru, the leftist Indian leader, regarding civil disobedience at a time when Great Britain is involved in a life-and-death struggle,¹ provides food for thought. True, there are residues of imperialism of the older variety in the British Empire. Yet this country has not only reached a stage in which it does not aim at further expansion, but was already before this war involved in a process of transformation which brings it gradually nearer to the fulfilment of the conception of the commonwealth, the union of free peoples united by common allegiances, traditions and standards of civilization without distinction of race or creed. This ambitious programme was well formulated by Mr. Ormsby-Gore, the British Colonial Secretary, in the League Assembly of 1934:

'The only thing that holds the British Empire together is equality

¹ See the statement made by L. S. Amery, Secretary of State for India, in the House of Commons, May 23rd, 1940, *Manchester Guardian*, May 24th, 1940, and, below, Chap. 30, p. 416.

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of status and freedom. If we were to substitute for our present conceptions of the British Empire this conception of the race ascendancy of one element in it – I presume it would be the Scotch – quite frankly, it would be the end. The British Empire does not conceive of itself in terms of racial solidarity, but in terms of the free association of free people, encouraged to develop their national consciousness within the greater unit, and, above all, bound together by what is the real guarantee for all minorities all over the world – free, self-governing institutions. We have always said: “Rather self-government than even good government.” . . . Parliamentary institutions are the cement of the British Empire.¹

There is no comparison between totalitarian imperialism and its conception of *Lebensraum*,² the right of ownership ‘to exploit subject peoples for the profit of a ruling class’³ and the conception of the commonwealth, which, in the words of a recent leading article in *The Times*, ‘stands for the brotherhood of all men as an ultimate reality, and, as a political goal capable of attainment within measurable time, for the effective brotherhood of all peoples within its own domain’.⁴ This ‘new vision’ of Empire, as King George called it in his message to the British Commonwealth,⁵ only carries a stage further the earlier definitions of British war aims. The overthrow of Hitlerism, as Chamberlain defined the Allied war objective, clearly indicates the immediate object of the war. For no new order is possible while the Nazi system exists, and any peace with Hitler would be nothing more than a precarious truce. Over and above the pledges made by Great Britain to the countries which have fallen victims to Hitler’s acts of aggression,⁶ the speeches of leading Statesmen in the Allied countries hold out hope for a European confederation⁷ or federation.⁸ These must, however, be read as

¹ The League of Nations, *Official Journal*, Special Supplement No. 120, p. 35. See also E. H. Carr, *Britain*, London, 1939, pp. 37 *et seq.*

² Compare R. E. Dickinson, ‘*Lebensraum*’, in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 111 *et seq.*, and the official statement issued by the German Legation in The Hague, March 6th, 1938, in *The Manchester Guardian*, March 8th, 1940.

³ *The Times*, April 22nd, 1940.

⁴ *Ibid.* See also Eden’s speech of April 17th, 1940, at the Constitutional Club, *The Times*, April 18th, 1940.

⁵ *The Times*, May 25th, 1940.

⁶ Compare N. Chamberlain’s speech at Birmingham, February 24th, 1940, *The Times*, February 26th, 1940, the British-French Declaration, March 28th, 1940, in *Free Europe*, 1940, p. 217, and N. Chamberlain’s declaration in the House of Commons regarding Norway, April 9th, 1940, *The Times*, April 10th, 1940.

⁷ See the above speech of the British Prime Minister.

⁸ Speech of the French Prime Minister before the French Senate, December 29th, 1939, *The Times*, December 30th, 1939.

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subject to the reservation which Chamberlain made expressly in his broadcast of November 26th, 1939: 'When we come to peace aims, we are dealing with something to be achieved in conditions we cannot at present foresee.'¹ As Balfour pointed out in similar circumstances in a debate in the House of Commons in 1917, 'none of us have the power of foreseeing the circumstances in which the world will find itself when these problems are finally decided, unless you can arrogate to yourself the gift of prophecy. How can anybody commit himself and his country – and perhaps in a certain sense the Allied countries – to precise statements upon these immensely important questions? You cannot do it, and I feel I should be doing a very ill service to the country were I to attempt to do it now'.²

Official pronouncements on the part of governments must necessarily be subject to tactical considerations. They may have to be varied and modified in accordance with the vicissitudes of war, the need to accommodate new friends, changing demands of public opinion at home and the reaction which they are likely to produce on the home front of the enemy. It may even happen that they will be forgotten at the Peace Conference or prove unrealizable in a post-War atmosphere. The question of the real war objects of a belligerent country, and the conformity of these with the aims professed while the war lasts, is decided at the Peace Conference, and must remain before then a matter of idle speculation. Even the issues at stake which are to a certain extent independent of their being fully perceived by the Statesmen of the belligerents, are subject to changes which the impact of events produces in the minds of the leaders of the countries concerned, belligerents and neutrals, their armies and their peoples.

Yet in this sense, Chamberlain's statement has a deeper meaning. For Hitlerism is not only a challenge of the kind represented by Imperial Germany in 1914. The war between the Allies and the Third Empire is much more than a conflict of interests between Greater powers. It is a conflict of worlds and of 'two fundamentally antagonistic conceptions of world order'.³ The Third Empire stands for values – if it is allowed to apply this ethical term to a system which in itself is the negation of all ethical standards – which in every respect are incompatible with the traditions of Western

¹ See N. Chamberlain's broadcast of November 26th, 1939, *The Times*, November 27th, 1939.

² *Hansard*, Fifth Series, Vol. XCVI, July 30th, 1917, cols. 1,847 *et seq.*

³ Eden, *l.c.*, in note 4, p. 363, above.

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civilization. However short actual practice and conduct may have fallen compared with the ideals of this mode of life, it cannot be denied that this civilization stands for very definite moral, social and political principles. This cultural heritage consists in the spiritual wealth of Rome and Athens, as transformed by the humanism of the Renaissance and the common standards of Christianity.¹ As, even in his rationalist age, Rousseau admits, 'Europe, even now, is indebted more to Christianity than to any other influence for the union, however imperfect, which survives among her members'.² Highest among those values may be classified the principles of freedom of individual conscience and of the voicing of religious, political and social views, equality in the sense of at least equal opportunity for the individual and groups such as nations, toleration, humanity, truth and justice. Imperfect as any human attempt must be to realize these values, Western civilization has elaborated institutions and methods which safeguard an at least relatively successful approach to a state of affairs in which these ideals can become a living reality. The rule of law, the application of equal moral standards to the behaviour of groups and individuals alike, democratic and representative institutions, the conception of the citizen and the idea of the commonwealth, they all are achievements of the human mind which bear witness to both classic and Christian influences.³ In the words of the last British Prime Minister, 'every day that passes gives us some new demonstration of Germany's utter disregard of religion, of mercy, of truth and of justice. If they were to triumph in what they are doing, why then every fortress which has been built by civilization upon the principles of Christianity would go down and the world would relapse into that barbarism which, until a little while ago, we thought had been buried under centuries of progress'.⁴ Hitler himself would not regard the identification of Nazism and barbarism as unjustified: 'Yes, we are barbarians! We want to be barbarians! It is an honourable

¹ Compare J. P. Mayer, *Political Thought. The European Tradition*, London, 1939, Thomas Jene Jones, *Essentials of Civilization*, New York, 1929, and S. Freud, *Civilization and its Discontents*, New York, 1930.

² J. J. Rousseau, *A Lasting Peace*, London, 1917, pp. 42-3.

³ Compare Sir Alfred Zimmern, *Nationality and Government*, London, 1918, p. 5; H. A. Smith's letter to the Editor of *The Times*, April 15th, 1939; the speech of the Archbishop of Canterbury to the two Houses of the Convocation of Canterbury, *The Times*, January 19th, 1939; speeches of the Prime Minister in Birmingham (*ibid.*, February 26th, 1940) and before the National Council of the Evangelic Free Churches (*ibid.*, April 17th, 1940) and of Lord Halifax at Oxford (*ibid.*, February 28th, 1940).

⁴ *The Times*, April 17th, 1940.

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title. We shall rejuvenate the world! This world is near its end. It is our mission to cause unrest.¹

What are the principles on which this modern apostasy is based? Freedom of the individual is replaced by blind obedience to the leader, justice by the interests of the permanent National Socialist revolution, truth by the requirements of propaganda, humanity by brutality and terror, the equality of men by the supremacy of an *élite* selected in accordance with racial principles, co-operation between nations by the principle of domination, and belief in good by the idolatry of the *Führer*.

If the gulf between these conceptions and Western civilization does not appear as unbridgeable in practice as it is in the realm of ideas, then it is only because the history of past centuries has been marred by forces alien from the spiritual bases of Western civilization. Chief amongst these is the conception and practice of power politics which implies the reputation of the principle that the moral codes of Christianity apply not only to individuals, but also to inter-State relations, and that the State can claim to be regarded as an absolute and ultimate value.

Second in rank follows our modern industrial system, which equally succeeded in imposing economic laws of its own contrary to the conceptions of social justice, inseparably connected with the teachings of Christianity. To describe this situation in the words of the Papal Encyclical *Quadragesimo Anno* (1931), 'it is patent that in our days not wealth alone is accumulated, but immense power and despotic economic domination are concentrated in the hands of a few, who for the most part are not the owners, but only the trustees and directors of invested funds which they administer at their own good pleasure. This domination is most powerfully exercised by those who, because they hold and control money, also govern credit and determine its allotment, for that reason supplying, so to speak, the lifeblood to the entire economic body, and grasping in their hands, as it were, the very soul of production, so that no one can breathe against their will. This accumulation of power, the characteristic note of the modern economic order, is a natural result of limitless free competition which permits the survival of those only who are the strongest, and this often means those who fight most relentlessly, and pay least heed to the dictates of conscience'.²

¹ Rauschning, *l.c.*, 1939, p. 87.

² Encyclical Letter, *Quadragesimo Anno*, London, 1931, pp. 46-7.

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Third must be mentioned that conception of the nation which regards the nation as an ultimate end, an emotionalism which does not become conscious of its relativity even in sight of the obvious fact that more than *one* nation inhabits the globe and that each of them, therefore, might be entitled to a similar and equally absurd claim. This nationalism, when combined with power politics and power economics, over-reaches itself and transforms itself into imperialism of a kind to which all Greater powers have succumbed in past centuries and in the pre-1914 period.

Thus the people of Great Britain have the right to regard themselves as the standard bearer of Western civilization in more than a superficial sense if they supplement their fight against Hitlerism by an attack on its counterparts within their own frontiers, the remnants of power politics, of unrestrained capitalism and of imperialism.¹

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¹ Compare Lord Halifax's speech, quoted in note 3, p. 365, above.

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CHAPTER 27

PEACE PLANS: THE VERSAILLES AND OTHER ‘REALIST’ PATTERNS

BURKE warned in his time against the over-enthusiasm of constitution makers, and, in his letter to a noble lord, he refers to ‘whole nests of pigeon-holes full of constitutions ready made, ticketed, sorted and numbered, some distinguished for their simplicity, some for their complexity; some with directions, others without a direction; some with councils of Elders, and councils of Youngsters, some without any council at all; some where the elders choose the representatives, some where the representatives choose the electors; some with five-shilling qualifications, some totally unqualified’.¹

While the drafting of pacts and constitutions of a new world order may serve the useful purposes of self-clarification and of providing a clear-cut basis for the discussion of such schemes, at this stage of the war, Burke’s sarcasm may serve a useful purpose. It may remind those engaged in the drafting of such blue-prints of the prime necessity to think first about the fundamental principles and main assumptions on which these paper plans are sometimes consciously, and sometimes unconsciously, based. If considered in this light, the mass of schemes put forward with immense enthusiasm and propaganda can be reduced to a few patterns. This is only natural, if one lets pass in review the few ideas which mankind has evolved in its long history regarding both internal and international government.² They all are variations of only a very limited number of basic conceptions, and in the international sphere the choice of peace-makers and of the citizen is still narrower.

If the war lasts beyond a limited period, the sacrifices of totalitarian warfare make themselves felt psychologically and the horrors perpetrated by Nazism against civilians make it still harder than it is at present for many to distinguish between the Nazi system and

¹ E. Burke, *A Letter to a noble Lord*, Cambridge, 1920, p. 161.

² Compare R. H. Crossman, *Government and the Governed*, London, 1939.

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the German people, a solution which will have to be considered seriously is a new version of the Versailles pattern. The more the actual treaty is forgotten (and how few people have read it, anyway!), the easier it is to voice the view that 'Prussianism and the evil things it stands for, were allowed to rise again, not because Allied statesmen failed to display imagination in 1918, but because their successors repudiated them and their work'.¹

The fact that Nazism, in its external policy, represents in many respects an intensified form of Prussian militarism lends colour to the argument of Sir Eric Phipps, formerly British Ambassador in Paris, that 'if we had in the past relied upon the eyes of our French friends rather than upon our own in judging Germany, we should have been better off to-day than we are now'.² It must be admitted that, psychologically, much is to be said for the most rigid view which can be put forward by advocates of this case. Whatever the explanation may be, the fact remains that Germany has fought three wars since 1870 on French soil, and, in the terminology of a collective system, in all these wars Germany has been the aggressor. Therefore, the attitude '*il faut en finir*' is a reaction to those events which merely expresses the deep longing of France for security, to be achieved at last after repeated and stupendous sacrifices made against the same adversary.³ A detached review of the French case could also not overlook that, at the Peace Conference in 1919, France relinquished her strategic claims to the left bank of the Rhine only in exchange for the treaties of assistance promised to her by the United States of America and Great Britain, which both failed to come in force through the non-ratification of the Peace Treaty of Versailles by the United States of America.⁴ Thus the French policy of the subsequent years, the Ruhr invasion and the alliances with Germany's Eastern neighbours were much more the symptom of French insecurity and their chronic anxiety over '*les incertitudes allemandes*' than of aggressive tendencies, as these moves were as obviously interpreted on the other side of the Rhine.⁵

It is, therefore, not astonishing that a distinguished Frenchman puts forward a scheme according to which after this war 'Germany

¹ R. A. Chaput, *The Road to War and the Way Out*, London, 1940, p. 55.

² Speech at a meeting in London of the British Association for International Understanding, April 3rd, 1940, *The Manchester Guardian*, April 4th, 1940.

³ See A. S. Gilbert, '*Il faut en finir*', in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 134 *et seq.*

⁴ See, above, Chap. 17.

⁵ Compare Pierre Viénot, *Incertaines allemandes*, Paris, 1931.

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should be disarmed totally and "for ever", by which the writer means for thirty or fifty years. 'Further, as the Germans for nearly a century had made it their policy always to deceive their neighbours, there must be military occupation of all the chief towns of Germany for a long time to supervise disarmament.' Professor Saurat, the author of this plan, further recommends that Great Britain and France should during an intermediate period make themselves responsible for the feeding and welfare of Germany, and that after three or four years a final settlement should be negotiated. Then the neutral States and Germany should be called to a conference 'on a footing of perfect equality to establish peace and liberty. An international body should be set up to take out of the hands of the national governments, not only all specialized weapons', but also 'all trade in aviation, civil and military, iron ore, nickel and the chemicals used in war'. 'The new alliance should consist at first of Britain, France, Germany, Italy, Poland and the Czechs, and afterwards of other countries at their option'. Professor Saurat further envisages international organization of industry and trade and a re-arrangement of social systems 'so that no country could languish amid starvation and unemployment'. Finally, he suggests that some aspects of education ought to be internationalized, 'for unless all the children in Western Europe, from Poland to Scotland, Germany included, were taught the same kind of history and ethics war would never end'.¹ It is not sufficient lightly to dismiss this plan and other examples² of the French security pattern. In the words of a British writer, 'what French reaction means by security is the break-up of Germany and the restoration of the Holy Roman Empire'.³ Yet underneath the demands for the unilateral disarmament or dismemberment of Germany⁴ issues are buried which require careful analysis.

In the first place, the French demand for a maximum of security must rightly be regarded as an axiom of any post-war settlement

¹ Address on 'A French View' to the Over-Seas League, London, February 14th, 1940. *The Times*, February 15th, 1940. See also P. G. Ilesley's comment on this speech in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 132 *et seq.*, and Saurat's reply, *ibid.*, pp. 187 *et seq.* See also for an elaboration of his views, Denis Saurat, 'French Aims' in *The Fortnightly*, April, 1940, pp. 356 *et seq.*

² Numerous examples may be found in the *Allied War and Peace Aims Digest*, published by the Post-War Bureau, London.

³ K. Ziliacus, 'War and Preparations for Peace', in *Where Stands Democracy?*, London, 1940.

⁴ Compare E. Stern-Rubarth, *Exit Prussia*, London, 1940, for an advocacy of the thesis that Prussia ought to be separated from the rest of Germany.

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which deserves the name. This request is the logical counterpart of any transfer of sovereign rights to an international authority, whether conceived on a federal or confederate basis. If, however, it is considered that this objective can be achieved by unilateral measures, the experiences of the post-1919 period suggest that any advocate of such scheme imperils the very object of his policy. For such a plan under-estimates the dynamic character of international affairs, and it takes only a few years, after a peace which is founded on the principle of retribution, to develop in the countries of at least some of the signatories a peace-guilt complex. The attitude taken by Great Britain towards Germany in the years following the French occupation of the Ruhr, bears out this thesis. Certainly, any country which has submitted to a system such as the Nazi régime, cannot complain, if it has to suffer the consequences of defeat in the game of power which its former leaders more ruthlessly played towards other nations than could ever be applied to itself. It is equally self-evident that if Germany were left in possession of its army and of some of the territories conquered by Hitler, 'Germany will also be left with the feeling, once again, that she is the real winner of the war, that war pays her, and that the best policy for her will be to start again soon on the chase after world domination.'¹

In this connection a minor point may be made which was overlooked in 1919. The Allied and Associated Powers refused to conclude a peace treaty with the representatives of Imperial Germany and considered it valueless to receive the signature of representatives who could speak 'merely for the constituted authorities of the Empire who have so far conducted the war'.² This line of policy was influenced partly by the desire to hasten in this way the overthrow of Imperial Germany by those forces inside Germany which regarded peace as the primary objective of German policy, to be achieved at practically any price in view of the rapidly deteriorating military situation since summer 1918; it was partly the result of the firm belief on the part of leading Statesmen and public opinion in the Allied countries that only democratic systems of government can, in the long run, be relied on to maintain peace. Yet the fact that the representatives of the German Republic signed the Armistice and Peace Treaty enabled at a later stage the parties associated with

¹ Douglas Reed, *Nemesis? The Story of Otto Strasser*, London, 1940, p. 234.

² Inquiry from President Wilson concerning the German request for an armistice, October 8th, 1918, in James Brown Scott, *Official Statements of War Aims and Peace Proposals*, Washington, 1921, p. 419.

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the remnants of the Imperial Army and the National Socialists to make the Republic responsible for a Peace Treaty which was only the result of the military defeat of the former Empire. Thus, in order to fix responsibilities clearly for future generations, the leading figures of the Third Empire who, at that time, are still available should appropriately fulfil this task at the next Peace Conference, whatever additional guarantees from representatives of the Germany of to-morrow may be regarded as desirable.

Whatever amount of retribution may seem adequate now and at the Peace Conference, a detached observer of the peace settlement of 1919 cannot fail to realize how quickly in a post-war world retribution becomes indistinguishable from injustice. The generations closely connected with the hated régime of the enemy pass away. New generations grow up in the countries of the victors who have less consciously or not at all witnessed the death, horror and destruction brought about by wanton aggression. In the words of the Archbishop of York, 'the result is that any element of retributive justice appears as an oppressive imposition upon persons who had no responsibility for the offence. In other words, any trace of retribution in a permanent settlement becomes increasingly unjust with every year that passes, until it is nothing else but an injustice demanding remedy. It is not to the past but to the future that we must look in planning a permanent peace; the justice in question is not retributive at all, but distributive only'.¹

The problem, however, is still more complicated. Increasingly often it is suggested that even a change in the internal government or a general collective system would not solve the essential problem, that of the German national character. As Sir Alfred Zimmern sees it, 'in the last analysis, the political problem of Europe to-day can be summed up in a single sentence. It is the problem of the political immaturity of the German people'.² Some attribute this phenomenon to German history, others to German philosophy, others, again, to peculiar features of the German national character, and others to the accumulation of these factors.³ It may be 'that the Nazi creed and code answer to something deep down in the German nature',⁴ but

¹ William Temple, *Thoughts in War-Time*, London, 1940, pp. 69-70.

² Sir Alfred Zimmern, *The Prospects of Civilization*, Oxford, 1939, p. 31.

³ Compare A. L. Rowse, 'What is wrong with the Germans?', in *The Political Quarterly*, 1940, Vol. XI, pp. 16 *et seq.*; Zimmern, *l.c.*, and Duff Cooper's speech at the Royal Society of St. George, April 23rd, 1940, *The Times*, April 24th, 1940.

⁴ Rowse, *l.c.*, p. 25.

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neither this nor the contrary assertion can be proved on scientific grounds. Generalizations and interpretations of this sort, whether applied to Germans, Jews or Welsh, contain such an element of subjectivity that it appears hard to value them as anything but irrational judgments with a Janus face which can be reversed according to convenience. For is there any difference in kind between Nazism and Fascism or between Hitler and Mussolini? Does Italy's aggression against Abyssinia compare favourably with any of Hitler's aggressions? If King Leopold's action, which, in the words of the French Prime Minister, was 'without precedent in history',¹ 'cannot be imputed to the whole nation',² cannot the same be said of the German people, which had in the election of March, 1933, already held under daily increasing Nazi terror, refused a majority to National Socialism? Can the whole German people be made responsible for the assistance to the Nazis which, at the critical moment, the parties of the right and centre gave by active support and those of the left by non-action and docile co-ordination? It is possible to reproach the German people with not having resorted to revolutionary counter-measures against the Nazi system. It must, however, be realized that, in all highly organized States, the chances of revolution have decidedly decreased, compared with the situation in the nineteenth century or even in 1919. If a government is not totally disorganized, as in practice only happens at the end of a lost war, in the era of tanks, gas and machine guns, and highly improved means of communications such as wireless telegraphy and radio, the odds are heavily in favour of the established order, whether it is democratic, fascist or communist. As the *Reichswehr* had taken the attitude at least of benevolent neutrality towards the Nazis, as the police had been deprived of its stoutest Republican supporters by the *coup d'état* of von Papen, and as the Nazis had been in possession of huge para-military formations, no such movement would have stood any chance of success. It may be suggested that it might have been possible to prevent such developments at earlier stages. It must not, however, be forgotten that whatever, objectively, the merits of the Peace Treaty of Versailles may have been, this Treaty, the unilateral disarmament of Germany and the refusal of modest enough demands in the sphere of foreign policy on the part of the German Republic, readily granted later to

¹ Broadcast to the French Nation, May 28th, 1940, *The Manchester Guardian*, May 29th, 1940.

² Broadcast by the Belgian Prime Minister, May 28th, 1940, *The Times*, May 29th, 1940.

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the Third Empire, provided Hitler with unique weapons of propaganda. In addition, the history of fascism in other countries seems to prove that, in its early stages, it enjoys the protection of powerful conservative groups and vested interests, and it must be admitted that the German Republic must share with other States the reproach of not having subjected these industrial and financial forces to a strict enough control, preventing them from establishing those private armies which were held out as a permanent threat to organized labour and the trade unions.

It may be that the Germans are bad revolutionaries, that they might not have resorted to internal violence even if the opportunities for doing so had existed. Perhaps Madame de Staël was right when she regarded vigorous submissiveness as the most prominent feature of the German national character.¹ Granted that this interpretation is correct, it means that, in a system of power politics, the German nation is only too likely to develop its internal organization to absolute perfection in order to fit into such a system. The Third Empire, looked at in this light, must appear to any politician who thinks in terms of power the incarnation of his hopes. The whole nation has been made subservient to the *one* object of strengthening to the utmost the potential fighting strength of the country. Military education begins at a time when the child is just able to walk. It increases in intensity in the following years and becomes a permanent feature of everybody's whole life. The economic life of the nation is already transformed in peacetime to the requirements of wartime economics. Freedom of thought is replaced by a regimentation and an ideology with which everyone is imbued from youth. Religion, a possible counter-force, is either made contemptible or harnessed to the same purpose by a subservient clergy which, apart from a gradually dwindling minority, is willing to identify the worship of Germany with that of God. Minorities, such as the Jews, are used as objects of persecution and brutality in order to imbue the nation with the mentality appropriate for the mastery of continents. These examples could be multiplied, but is it not possible that what the world dislikes most – and rightly – in the Nazi system are those features which reflect the spirit of power politics merely in its most intensified and perfect manner? Might it not be that the Germany of Beethoven and Goethe, Kant and Einstein, might become an equally ardent disciple of an international community system, if

¹ Zimmern, *l.c.*, p. 31.

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ever the world cared to exchange the rule of force for international order?

This may also indicate why the establishment of democracy in Germany did not prove to be a sufficient safeguard against the reappearance of militarism and imperialism in that country. Wilson was deeply convinced that democracy and peace are inseparably connected. This attitude can be understood if one bears in mind that democracy developed, both as a programme and as a political reality, in violent conflict with absolutism. War was identified by the advocates of democracy with the cabinet wars of the eighteenth century, fought for dynastic interests and without regard for the nations concerned. Furthermore, this conception assumes that the people are, firstly, more sincere, and, secondly, more peaceful than the Statesmen who control their government, and particularly their foreign policy.¹ While a certain amount of scepticism may be advisable regarding both these premises, it must be admitted that it is more difficult for governments to pursue the game of power politics, which requires the maximum of secrecy, in democracies which vigorously control the conduct of foreign affairs. The foreign policy of the United States of America may serve as an illustration of this thesis. The President has to give reasons for his foreign policy. 'He is compelled to educate public opinion; he cannot drive it.'² The functions fulfilled by the Senate may impede action when this may be desired for reasons of efficient government, but they also hamper the implementation of gentlemen's agreements, not approved by the representative institutions of such a country.³ It may even be argued that only a country which is in the exceptionally fortunate circumstances of the United States of America can afford the luxury of such a system, and that it would just not work in democracies more closely entangled in a field of power politics. As the history of the Munich Agreement has proved, the parliaments of both France and Great Britain were presented with *faits accomplis* which no subsequent discussion could have undone.⁴ If democratic control can be suspended to such an extent in the field of foreign policy in democracies

¹ See Thomas Paine, *The Rights of Man*, London, 1792, pp. 77 *et seq.*, and the present writer's *The League of Nations and World Order*, London, 1936, pp. 29 *et seq.*, for an examination of this problem as it appeared to the drafters of the League Covenant.

² H. J. Laski, *The American Presidency*, London, 1940.

³ Compare for an outspoken criticism of this system Ray Stannard Baker, *Woodrow Wilson and the World Settlement*, New York, 1922, Vol. I, p. 316.

⁴ See A. B. Keith, 'The Policy of Appeasement and the League of Nations', in *The New Commonwealth Quarterly*, 1938, Vol. IV, pp. 300 *et seq.*

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such as Great Britain and France, how can it be expected that democracy can form an effective barrier against power politics and war, its ultimate means of diplomacy? In Wilson's scheme, democracy was *one* of the various elements of international order, and, within a community system, the democratic control of foreign affairs is certainly bound to strengthen the tendencies opposing a relapse into the rule of force. In a system of power politics, the superiority of movement and freedom of decision which authoritarian and totalitarian States enjoy over their democratic rivals leads either to serious setbacks for democratic States or to their assimilation to the high-handed methods of the dictators, i.e. a limitation or suspension of democracy in the hour of crisis. For this reason, the mere re-establishment of democracy and representative institutions in Germany after the war could not have the desired result in foreign affairs if, in all other respects, the Versailles pattern were repeated or were replaced by a super-Versailles.

It may be suggested that Saurat's scheme avoids this danger, as it couples the Versailles pattern with conceptions of a true community system. It may be likely, as Saurat and also Harold Nicolson¹ suggest, that it would be absolutely out of the question to achieve a complete solution at the Peace Conference in the overheated atmosphere of the immediate post-war period. For this psychological reason, it may be wise to separate the issues of the war and peace settlements. Yet who can foresee whether, after a few years have lapsed, Statesmen and peoples are still prepared to make those sweeping surrenders of national sovereignty which they might be prepared to make in *one* spontaneous effort at the end of the war, in order to win the fight for peace? May it not be that after a few years their interest might be absorbed by problems of an internal character, social and economic, if one gigantic attempt is not made to settle immediately the problem of demobilization and peacetime re-organization? Might it not happen that the unilateral measures meanwhile imposed on the defeated enemy might provoke an attitude similar to that brought about in Germany by unilateral disarmament which was never followed by corresponding steps on the part of Germany's neighbours? And, finally, might not an unresponsive attitude on the part of Germany, disillusioned both by the experiences of the post-1919 period and of the Hitler régime, towards the Versailles pattern of the

¹ Harold Nicolson, *Why Britain is at War* (Penguin Special), Harmondsworth, 1939, pp. 148 *et seq.*

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peace settlement provide afterwards a sufficient reason or excuse for scrapping the second part of the programme?

It remains to consider briefly two other variants of the realist pattern. Professor Carr suggests that 'ultimately the best hope of progress towards international conciliation seems to lie along the path of economic reconstruction'.¹ If, as the use of the term 'conciliation' and the whole tenor of this stimulating book suggest, such co-operation is to be put into effect without international government in other essential spheres, if 'those elegant superstructures must wait until some progress has been made in digging their foundations',² the experiences made in the post-1919 period with isolated attempts at international economic and financial collaboration³ make it highly probable that nations digging in accordance with this advice will not dig foundations of international order, but the graves for the victims of another major war.

Another representative of the same school of thought is to be found in Lord Lloyd. He expresses the view that even a repetition of the League of Nations would be a sufficient guarantee of peace, if only all the signatories could be relied upon to continue in future in their willingness 'to remain loyal and effective parties to such a Covenant. It is the reality – the will to war or peace not the form of organization – which counts. Unify Europe, and, granted the will to war, you will have rebellions. Federate Europe and you will have secessions. Restore the League, and, if the will to war is there, you will have military sanctions. To-day, we have war. The difference is one of words. The things are precisely the same.'⁴ If the history of the League of Nations permits a lesson, it is that countries which jealously maintain the means to defend it *cannot* be relied upon to continuously live up to their obligations under the covenant of a confederation. As has happened before, peoples may be full of the best will, but their governments may decide otherwise. Fascist Italy, in the cases both of the war against Abyssinia and of the present war between the Allies and Germany, presents a model example of this thesis. Even peoples, carefully prepared by their national government, may be roused to passion if there is no super-government with power superior to that of the nation States and with direct control over their citizens. It may be argued that a united or federated Europe cannot be achieved at

¹ E. H. Carr, *The Twenty Years' Crisis*, London, 1939, p. 304.

² *ibid.*, p. 307.

³ See, above, Chap. 19.

⁴ Lord Lloyd, *The British Case*, London, 1939, p. 59.

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the conclusion of this war. If, however, it were possible to realize it, a European government, having at its disposal the super-weapons of our age, could easily prove that a federal execution against a member State denied the use of these weapons is as different from war as is police action against gangsters. Therefore, it seems that the form of organization does matter. The difference is real and substantial, and it does not look as if 'the things are precisely the same'.

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CHAPTER 28

THE RIGHTS OF MAN PATTERN

THE eternal issue of the place of the individual in the community is a question which requires constant attention within an international community as much as within national groups. The collectivist approach of the fascist, Nazist or communist type eliminates the problem by deciding it wholly in favour of the community. This solution is, however, contrary to what Waldo Frank has aptly called our Great Tradition, the heritage of Greece and Judea, the revelation of Christendom, and the trend of modern rationalism. 'It can be simply defined. It is the sense (by which I mean the synchronous elements of intuitive knowledge and faith that later become rational belief) that the individual *as an individual* partakes of the divine, which is his way of naming the universal and finding it good, and knowing it his. It is the sense that the individual has purpose and direction, dignity and value, because God is in him.'¹

If government extends beyond the national border-line and is to become supra-national government, the impact and weight of such super-centralization must further weaken the position of the individual, if this trend is not counter-balanced by particularly strong safeguards in favour of the citizen, the ultimate basis of the international community. The traditional form in which, in past centuries, it has been attempted to institutionalize this refuge of the individual from an increasingly powerful central authority has been the pattern of a charter of the Rights of Man. Magna Carta (1215), the Petition of Right (1628) and the Bill of Rights (1689) are not only three of the great statutory landmarks of the English Constitution,² but the models on which declarations of a similar type were shaped on the American and European continents. The

¹ Waldo Frank, 'Our Guilt in Fascism', in *The New Republic*, New York, 1940, p. 604. Compare also Gustav Radbruch, *Rechtsphilosophie*, Leipzig, 1932, pp. 58 *et seq.*

² See A. B. Keith, *Constitutional Law*, London, 1939, pp. 8 *et seq.*, and E. Burke, *Reflections on the Revolution in France, 1790*, in *The Works of the Right Honourable Edmund Burke*, London, 1934, Vol. IV, p. 35, and his speech in the House of Commons on Mr. Fox's East India Bill, December 1st, 1783, *ibid.*, Vol. III, p. 62.

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Bills of Rights and Declarations of Rights, adopted by a great number of the American states in the second half of the eighteenth century, and the French Declaration of Rights of August 26th, 1789, are symptoms of that fundamental feature of Western civilization, the protection of the individual. The tide of this European movement swept North America, but, as Thomas Paine observed in his *Rights of Man*, 'the tide of all human affairs has its ebb and flow in directions contrary to each other'. Thus, 'government founded on moral theory, on a system of universal peace, on the indefensible hereditary Rights of Man, is now revolving from west to east, by a stronger impulse than the government of the sword revolved from east to west'.¹ The French Declaration of the Rights of Man in its turn became the prototype of those constitutions on the European continent in which, in the course of the nineteenth and twentieth centuries, catalogues of fundamental rights of the citizen were incorporated.² The Declaration of the Rights of Man and Citizens, adopted by the National Assembly of France, enumerates liberty, property, security and resistance to oppression as 'the natural and imprescriptible rights of man'.³ The end of all political associations is declared to be the preservation of these rights. It is, however, essential to realize that the Assembly, in spite of its individualistic approach to the problem of government, did not overlook the condition on which the realization of this object depends, the existence of a strong community. Authority does not lie with the individual or any number of them, but 'the nation is essentially the source of all sovereignty'.⁴ The duties of men and citizens follow from their co-existence in the same community. Therefore political liberty cannot be unlimited and consists only in the power of doing whatever does not injure another. 'The exercise of the natural rights of every man has no other limits than those which are necessary to secure to every other man the free exercise of the same rights.' These limits are determinable only by the law, that is to say, the community as such.⁵ While the rule of law, as understood in an individualistic

¹ Thomas Paine, *The Rights of Man*, London, 1792, Part II, p. 11. See also Hermann Friedmann, 'The Rights of Man', in *Transactions of the Grotius Society*, London, 1939, pp. 193 *et seq.*

² Compare C. F. Strong, *Modern Political Constitutions*, London, 1939, Dail Eireann, *Select Constitutions of the World*, Dublin, 1922, W. E. Rappard and others, *Source Book on European Governments*, New York, 1937, B. Mirkine-Guetzewitch, *Les Constitutions de l'Europe Nouvelle*, Paris, 1928, and Gerhard Anschütz, *Die Verfassung des Deutschen Reiches vom 11. August 1919*, Berlin, 1927, pp. 296 *et seq.*

³ Article II. The Declaration is quoted in full by Paine, *l.c.* Vol. I, pp. 53 *et seq.*

⁴ Article III.

⁵ Article IV.

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and liberal sense, implies that everything that is not prohibited is allowed, it is left to the community to decide what actions are 'hurtful to society' and should, therefore, be prohibited.¹ While every citizen should have the right, directly or by representation, to take part in the formation of the law, 'the law is an expression of the will of the community'.² Finally, the drafters of the Declaration were well aware of the need to supplement the will of the community and to protect its members by collective force: 'A public force being necessary to give security to the rights of men and of citizens, that force is instituted for the benefit of the community.'³

In substance, this Declaration is limited to the protection of the rights of freedom enjoyed by the individual in isolation (freedom of conscience, personal freedom, private property), of the rights of freedom of the individual enjoyed in conjunction with other individuals (freedom of speech, discussion, writing and publication) and of the rights of the individual as a citizen (equality before the law, of franchise and in access to public offices). Thus it presents a combination of liberal and individualistic guarantees of the sphere of personal freedom and the democratic and political rights of the individual citizen.⁴

When, in the twentieth century, the idea of fundamental rights travelled further east, it underwent a thorough transformation in the Declaration of Rights of the Peoples of Russia of November 2nd, 1917, and the Declaration of the Rights of the Toiling and Exploited People of January 18th, 1918.⁵ The principle of the national community is replaced by the monopoly of power of workers and peasants, 'their plenipotentiary representatives, the soviets of workers', soldiers' and peasants' deputies'.⁶ Political equality, 'the fundamental aim', is defined as 'the abolition of all exploitation of man by man, the complete elimination of the division of society into classes, the ruthless suppression of exploiters, the establishment of a socialist organization of society and of the victory of socialism'.⁷ The right of the peoples of Russia to free self-determination 'to the point of separation and the formation of an independent State'⁸ receives the rank of a fundamental right. Economic freedom and competition gives way

¹ Article V.

² Article VI.

³ Article XII.

⁴ See Carl Schmitt, *Verfassungslehre*, Munich, 1928, pp. 157 *et seq.*

⁵ Text in Rappard, *l.c.*, V, pp. 60 *et seq.*

⁶ Declaration of January 18th, 1918, Chap. IV, 7, *ibid.*, p. 65.

⁷ *ibid.*, Chap. II, 3, p. 63.

⁸ Declaration of November 2nd, 1917, *ibid.*, pp. 61-2.

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to the right and duty to work, and a universal labour service is introduced 'for the purpose of abolishing the parasitic strata of society and of organizing economic life'.¹ Amongst other socialist rights of the individual against the State may be mentioned the rights to rest,² to material security in old age as well as in the event of sickness and loss of capacity to work,³ the right to education,⁴ and amongst the social duties of the individual ranks in the foreground that laid down in Article 133: 'The defence of the fatherland: violation of oath, desertion to the enemy, impairing the military might of the State, espionage, is punishable with the full severity of the law as the most heinous crime.'⁵

The German Constitution of 1919 devotes the whole of its second part to the fundamental rights and duties of the Germans. It represents a compromise between the Western catalogues of rights of freedom and democratic rights of citizens and the collectivist approach of the U.S.S.R. The German revolution of 1919 merely signified the breakdown of the former Imperial system, but did not evolve any constructive idea of its own. Labour, Liberals and republican Catholics were content to provide a framework within which reconstruction could be started, leaving the major issues in the economic, social and educational spheres undecided for the time being. Thus the collection of rights and duties assembled in the Constitution was the result of a compromise between parties with essentially differing valuations on practically all important problems. The only decisions actually made were limited to the adoption of the principle of a representative democracy and of the fundamental right of freedom of the individual, both conditions of the rule of law in the Western sense.

The Russian fundamental rights and duties of the citizen serve as an example that more is needed than a mere paper declaration to make these principles a reality. Freedom of religion,⁶ speech, press, assembly and meetings, street processions and demonstrations,⁷ and association⁸ are guaranteed to the citizens of the U.S.S.R. Personal inviolability,⁹ inviolability of the homes of citizens and secrecy of correspondence¹⁰ are protected by the Constitution. Nevertheless, it is not even contested by advocates of the Soviet *régime* that

¹ Declaration of January 18th, 1918, Chap. II, 3 f, *ibid.*, p. 64, and Article 118 of the Constitution of the U.S.S.R. of 1936, *ibid.*, p. 125.

² Article 119.

³ Article 120.

⁴ Article 121.

⁵ *I.c.* in note 1 above, p. 127.

⁶ Article 124.

⁷ Article 125.

⁸ Article 126.

⁹ Article 127.

¹⁰ Article 128.

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no opponent of this system could rely on any of these rights of freedom of the individual. They are just as much mere masquerade as the federal structure of the U.S.S.R., if this term, as it appears according to the Constitution of 1936, is meant to indicate a certain balance between federal government and the rights of the member States.¹ The explanation is not difficult to perceive. Behind the federal *façade* exists the real constitution of the U.S.S.R., the interplay between the Communist Party, the Red Army and the O.G.P.U., the real forces which control that country and which maintain the equilibrium between workers, peasants and the new middle class, represented by the bureaucracy of a totalitarian State. The lack of control of the executive organs from below, the absence of a democratic basis, deprives the federation and the fundamental rights and duties of any real meaning.²

It must not, however, be assumed that the problem is solved, if, as in the United States of America or in the Weimar Republic, the interpretation of these fundamental rights is left in the hands of the judiciary. The general and necessarily vague character of these rules gives a power of discretion to courts which, in constitutions differentiating between basic constitutional principles and ordinary legislation in practice, subordinates legislation both of the federation and of member States to the veto of the judge.³ President Roosevelt, in his message to Congress in December, 1908, squarely describes the key position of the judiciary in a constitutional balance of this kind as follows: 'The chief law-makers in our country may be, and often are, the judges, because they are the final seal of authority. Every time they interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy; and since such interpretation is fundamental, they give direction to all law-making. The decisions of the courts on economic and social questions depend upon their economic and social philosophy.'⁴ This position, which in itself is an eventuality, not necessarily contemplated by the advocates of such declarations,

¹ Compare, below, Chap. 30.

² See Leslie C. Greenberg, 'A Precedent: The Soviet Tables of the Rights of Man', in *Union. The Monthly Forum of the New Commonwealth Institute of World Affairs*, 1940, pp. 114 *et seq.*

³ Compare Lord Bryce, *The American Commonwealth*, London, 1891 (Vol. I), pp. 225 *et seq.*, and Harold J. Laski, *The American Presidency*, London, 1940, pp. 67 *et seq.*

⁴ Quoted by Charles Groves Haines, 'General Observations on the Effects of Personal, Political, and Economic Influences on the Decisions of Judges', in *The Illinois Law Review*, 1922 (Vol. 17), p. 109.

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becomes still more serious when the judicial guardians of the Constitution use this power in ways either not contemplated originally by the constitution-making bodies or regarded as contrary to social developments by a substantial majority of the citizens. The interpretation of the Constitution of the United States of America offers telling examples of how rights of freedom, meant for the benefit of the citizen, were transformed into bastions of vested interests against the citizen. The extension of the protection accorded by the amendments of the Constitution to corporations by their equation with citizens on the basis of undisclosed records of Congress proceedings,¹ and the interpretation of abstract notions such as deprivation of any person's 'life, liberty, or property, without due process of law', 'equal protection of the laws',² or freedom of contract by the American Supreme Court divulges the potential issue to which a powerful judiciary may put the fundamental rights of the citizen. In the words of an American student, 'a constitutional doctrine contrived to protect the natural rights of men against corporate monopoly was little by little commuted into a formula for safeguarding the domain of business against the regulatory power of the State'.³

Nor was this an isolated attempt limited to the United States. The Weimar Republic witnessed similar attempts on the part of lawyers and courts, as soon as the fear of organized labour and radical republicanism had subsided. Heavy industry and big finance, in coalition with the Reichswehr, the owners of the large estates and all the other ingredients of the former Imperial Germany, waged their social counter-offensive, not only on the economic and social plane, but also in the para-military struggle of parties. They found the fundamental rights and duties of the German people a heaven-sent opportunity to defend and advance their interests by an offensive in the legal sphere planned and executed on the American model.⁴ It is therefore not astonishing that the assertion of German courts to be competent to examine laws as to their compatibility with the

¹ *San Mateo County v. Southern Pacific R.R. Co.*, 116 U.S. 138; *Santa Clara County v. Southern Pacific R.R. Co.*, 118 U.S. 394. See also Howard Jay Graham, 'The Conspiracy Theory of the Fourteenth Amendment', in *The Yale Law Journal*, 1938 (Vol. XLVII), p. 371.

² Fifth and Fourteenth Amendments.

³ Walton H. Hamilton, 'The Path of Due Process of Law', in Conyers Read (Editor), *The Constitution Reconsidered*, New York, 1938, p. 187.

⁴ Compare H. Rommen, 'Die Grundrechte, Gesetz und Richter in den Vereinigten Staaten von Nordamerika', in *Deutschtum und Ausland*, 1931, pp. 83 *et seq.*, and Gerhard Anschütz and Richard Thoma, *Handbuch des Deutschen Staatsrechts*, Tübingen, 1932, Vol. II, pp. 151 *et seq.* and 624 *et seq.*

Constitution of the Reich in the case of alleged arbitrariness on the part of the legislature was first made regarding taxation laws.¹

Natural law, being a prime factor in the development of international law, was responsible for the introduction of the conception of fundamental rights into inter-State relations. As Vattel puts it, nations have towards each other the same duties as individuals, but he makes far-reaching allowance for the difference between individuals and collective entities.² These fundamental rights are usually classified as the rights of existence, of self-preservation, of equality, of independence, of territorial supremacy, of holding and acquiring territory, of intercourse and of good name and reputation.³ The difference of opinion between international lawyers, whether these rights really deserve the description of fundamental rights or are only rights and duties customarily recognized is of minor significance. These rights offer an object lesson of the fate of fundamental principles which are supposed to have validity in a society ultimately based on the rule of force, and the interpretation of which is left in principle and practice to the members of this society. This readily explains the fact that no unanimity could ever be achieved 'with regard to the number, the appellation, and the contents of these alleged fundamental rights. Hardly two text-book writers agreed on details with regard to the fundamental rights'.⁴ It has also been maintained - and support for this view can be derived from the judgments of international courts - that international law guarantees certain fundamental rights of the individual, such as to life, liberty and property, or minimum standards of Western civilization,⁵ 'culture and moral conceptions of, more or less, the same kind, with certain basic ideas common to all'.⁶ With the break-up of the international society by the emergence of national communities, founded on systems of values totally differing from that hitherto taken for

¹ Decisions of the *Oberverwaltungsgericht*, Hamburg, March 18th, 1925 (*Steuer und Wirtschaft*, Vol. IV, p. 1,469), and of the *Reichsfinanzhof* of January 15th, 1931 (*Collection of Decisions*, Vol. 27, p. 321). See also *Juristische Wochenschrift*, Berlin, 1930, pp. 1,630 and 2,099.

² M. de Vattel, *Le Droit des Gens*, London, 1758, Vol. I, Bk. II, Chap. I, paragraphs 3 *et seq.*, pp. 258 *et seq.*

³ Oppenheim-Lauterpacht, *International Law*, London, 1937, Vol. I, pp. 217-18.

⁴ *ibid.*, p. 218. See also J. L. Brierly, *The Law of Nations*, Oxford, 1936, pp. 39 *et seq.*

⁵ Compare the present writer's *Die Kreugeranleihen. Ein Beitrag zur Auslegung der internationalen Anleihe- und Monopolverträge sowie zur Lehre vom Staatsbankrott*, Munich, 1931, pp. 40 *et seq.*, and H. Lauterpacht, 'Règles Générales du Droit de la Paix', in *Recueil des Cours de l'Académie de Droit International*, Paris, 1937, pp. 228 *et seq.*

⁶ A. Fachiri, 'International Law and the Property of Aliens', in *The British Year Book of International Law*, London, 1929, p. 33. See also, above, Chap. I.

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granted, the validity of these principles became limited to those States which still accepted the basic denominators of Christian civilization.

The attempt made in the Preamble of the League Covenant to lay down certain basic rules of conduct for members did not produce any visible effect. The effort made on a broader basis by Cordell Hull, the United States' Secretary of State, proved equally abortive. In his Declaration of July 16th, 1937, he communicated to the governments of the world fourteen 'basic principles of conduct',¹ such as national and international self-restraint, the revitalization and strengthening of international law, abstinence from the resort to armed force, non-intervention, and the promotion of economic security and stability all over the world. The United States' Secretary of State expressed the hope that 'the cumulative effect of their approval would do much to revitalize and to strengthen standards desirable in international conduct'. Sixty-one governments, amongst them Germany, Italy and Japan, replied in the affirmative. Apart from this rather Platonic approval, things remained exactly in the same state in which they had been before.²

H. G. Wells has made it his task to advocate a new Declaration of the Rights of Man which 'must become the common fundamental law of all communities and collectivities assembled under the World Pax. It should be interwoven with the declared war aims of the combatant powers now; it should become the primary fact in any settlement; it should be put before the now combatant States for their approval, their embarrassed silence or their rejection'.³ The Declaration advocated by H. G. Wells embodies the individualistic rights against the community which are modelled on the American, French, German and Russian patterns. There is, however, no trace of those fundamental rights which can be classified as the rights of freedom of the individual enjoyed in combination with other individuals such as freedom of speech, discussion, press, nor of the democratic rights of the citizen such as equality before the law, of

¹ See for the text *Press Releases, Department of State, Washington, 1937* (Vol. XVII), No. 407, pp. 47 *et seq.*

² Compare for an analysis of the Declaration and the replies the present writer's 'An American Challenge to International Anarchy', in *Transactions of the Grotius Society*, London, 1938. See for other attempts in the same direction Oppenheim-Lauterpacht, *l.c.*, Vol. I, p. 218, note 1, and A. Alvarez, *Exposé de motifs et projet définitif de Déclaration des grands principes du Droit International moderne*, Paris, 1936.

³ H. G. Wells, *The New World Order*, London, 1940, p. 138, 'The Rights of Man', in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 22 *et seq.*, and *The Rights of Man, or What we are fighting for*, Harmondsworth, 1940.

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franchise and access to public offices.¹ As the Declaration 'incorporates all previous Declarations of Human Right',² it may be argued that it covers also those rights. Their significance is, however, such that they deserve express enumeration, if whole articles can be devoted to the 'right to buy or sell without any discriminatory restrictions anything which may be lawfully bought or sold',³ or to the right of rambling 'over any kind of country, moorland, mountain, farm, great garden or what not'.⁴ The assertion that 'there is no source of law but the whole people' and the protestation that 'this Declaration shall not be qualified nor departed from upon any pretext whatever'.⁵ are not sufficient in themselves to secure more than lip service to these principles, even if adopted by the powers that be, without adequate guarantees against intimidation, terrorism and the other weapons of 'cold' fascism, not to speak of the abuse of majority rights in fanaticized mass societies. Standards of conduct of this kind depend on the existence of a community which wills them to be observed and on strong institutions ready to prevent their infringement and to call to order any transgressor, however powerful he may be. In the words of S. de Madariaga, once a group of men has become a community, 'peace within that community is only possible if it becomes aware of itself, i.e. if it becomes a commonwealth, for it is only on the plane of the commonwealth that justice can be established and without justice there is no peace'.⁶ While H. G. Wells expresses himself in favour of federation as a means of international order, particularly as this conception 'may be a means of mental release for many people who would otherwise have remained dully resistant to any sort of change',⁷ his hopes in horizontal or functional federation can only be realized concurrently with vertical federation, or they remain condemned to their present narrow confine. Organizations of a technical, commercial and professional kind, such as the International Postal Union, the Bank for International Settlements, white slave trade control or the Interparliamentary Union are, within a system of power politics, limited to that sphere of international relations which is irrelevant from the standpoint of 'high' politics. 'The doctors, the aviators,

¹ Compare, above, text to note 4, p. 382.

² *I.e.*, Harmondsworth, 1940, p. 84.

³ *ibid.*, p. 81.

⁴ *ibid.*, p. 82.

⁵ *ibid.*, pp. 83-4.

⁶ In *The Daily Herald*, February 27th, 1940. See there also the other contributions to the discussion on Wells' draft, February 5th, 1940, and in subsequent issues, particularly N. Bentwich, February 26th, 1940.

⁷ H. G. Wells, *The New World Order*, London, 1940, p. 89.

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the shipping world'¹ have so far proved themselves unable by their horizontal international organizations to narrow effectively the realm of the rule of force. If this reign is to be broken, experience seems to show that only a frontal attack can lead to its overthrow. Once this object is achieved, vertical federation may be of valuable assistance to the integration of a new world order. The same applies to the suggestion of a Declaration of the Rights of Man. There are many who fear that federal union, so fervently recommended by sudden converts from the camps of power politics and vested interests, is nothing but the last catchword of a bygone social and political system, not so much a federal union or new commonwealth as merely Federal Wealth. As federation in a formal sense may be equally well a federation of capitalist and socialist, of democratic and fascist States, a declaration of the fundamental principles on which this international order is to be based might overcome this difficulty and essentially contribute towards its integration.

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CHAPTER 29

THE LEAGUE REFORM PATTERN

THE 'realists' who managed and mismanaged the League of Nations operated throughout the history of that ill-fated collective system with different sets of arguments. In the first place, they regretfully drew attention to the imperfect machinery for the pacific settlement of international disputes, for peaceful change, for collective security and for disarmament, and to the thorny problems created by the unanimity principle. Whenever this first line of defence was broken by constructive suggestions for the improvement of those obvious shortcomings, they either shrugged their shoulders in despair at the unbelievable optimism of the would-be reformers or haughtily replied that, whatever the merits of such suggestions might be, they would not stand a chance of being accepted by the stern representatives of the League members. True as this answer was, since hardly any of the governments pledged to the Covenant were prepared to exchange power politics for an international community proper, nevertheless these schemes fulfilled a useful function. Their mere existence and discussion by public opinion made it obvious that there were deeper issues behind the difficulties which were admitted to beset the way of the Geneva system.

Foremost amongst those who incessantly fought for a logical realization of the threefold League programme of a comprehensive system for the pacific settlement of international disputes, including peaceful change, collective security and disarmament, were Lord Davies and the New Commonwealth Society,¹ founded by him and like-minded pioneers in the field of international order. Their contention was that the simultaneous establishment of an International Equity Tribunal and an International Police Force would

¹ In 1934 the N.C. Society founded the N.C. Institute for 'the study of fundamental principles of international relations and research into the particular problems of international justice and security'. Since 1940, the Institute, now the New Commonwealth Institute of World Affairs, is completely separated from the N.C. Society and has widened the scope of its research programme so as to include in its work 'the study of fundamental principles of international order, democracy and social justice'.

go a long way to liberate the world of the otherwise constant danger of a new Armageddon.

These ideas in themselves were certainly not new. In 1835 William Ladd, the founder of the American Peace Society, submitted a petition to the Senate of Massachusetts which amounted to a proposal for an international equity tribunal.¹ Four years before the outbreak of the first World War, a resolution received the assent of the American Senate and House of Representatives which called for 'constituting the combined navies of the world an international force for the preservation of universal peace'.² At the Peace Conference of Versailles, and in the course of the Disarmament Conference, France made herself the sponsor of this idea, though her governments never favoured similarly courageous excursions in the field of peaceful change, thus reducing the conception of an international police force to an ideology covering the one-sided interest of France in the maintenance of the political *status quo* created in 1919.³

Yet the main value of Lord Davies' suggestions consists in the attempt to create a fair balance between the static and dynamic forces in the international society, and in the concrete character of his comprehensive scheme.

The difficulties opposing the establishment of an international equity tribunal and of an international police force are not to be minimized. It would, however, be exaggerated to assume that they are insurmountable. Shortly before the outbreak of the second World War, a distinguished international lawyer thought it 'chimerical to expect that it is possible to give to a tribunal consisting of a small number of individuals sufficient prestige and authority to ensure the acceptance of its decisions by a State against whose interests or apparent interests the decision will operate'.⁴ Yet only a few months later, the same author when confronted with the necessity of formulating

¹ A photostatic copy of the petition is reproduced in the present writer's *William Ladd: An Examination of an American Proposal for an International Equity Tribunal*, London, 1936, pp. 79 *et seq.*

² *Congressional Record*, 1910, Vol. 45, Part 8, p. 8,545. See, on the attitude of Theodore Roosevelt and similar proposals in the same direction, Lord Davies, *The Problem of the Twentieth Century*, London, 1934, pp. 101 *et seq.*

³ French Proposals of February 5th, 1932 (*Conference Documents*, I, 113) and the French Memorandum of November 14th, 1932 (*Conference Records, Minutes of the General Commission*, pp. 215 *et seq.*). Compare also the French Memorandum of April 18th, 1936, and the articles by Georges Scelle and F. Berber on 'The Franco-German Peace Discussions', in *The New Commonwealth Quarterly*, 1936 (Vol. II), pp. 25 *et seq.*

⁴ Sir John Fischer Williams, *Aspects of Modern International Law*, London, 1939, p. 96.

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himself a constructive solution of the problem of peaceful change suggests: 'For the settlement of any dispute in which a change of legal rights is sought, let the matter be submitted to a board of five members composed of nationals of Powers strangers to the dispute. . . . Decisions of this "Equity Tribunal" should have the same value as the decisions of the Permanent Court itself.'¹ Therefore it seems that an idea which can claim a convert of this calibre within so short a time is worth being more closely examined.

Various analogies suggest themselves, if it is to be attempted to solve the problem of change in the international sphere, from a rational point of view. In the municipal sphere, legislation has become the antidote to violent changes and revolution, and it is therefore only natural that reformers investigate in the first place similar possibilities in the realm of inter-State affairs. Impressed by this precedent, Professor Lauterpacht holds that the existence of an international legislature 'is the only proper meaning of peaceful change as an effective legal institution of the international society'.² While it is certainly possible to conceive the problem in those terms, historical evidence does not seem to warrant the exclusiveness of his approach. Both the development of Roman Law under the guiding hand of the Roman praetor and the influence exerted by the equity jurisdiction of the Lord Chancellor on the growth of English Law show that quasi-judicial agencies may fill the gap where there is otherwise only the alternative between complete *laissez-faire* and full-dress legislation.³ It may even be argued that such a solution recommends itself more than an international legislature because of its greater caution. Whereas a legislative body creates abstract rules to be applied generally, the decision of an equity tribunal would only be binding between the parties, and in respect to the particular case decided by the tribunal. It should also not be forgotten that in disputes between capital and labour, 'the nearest analogy in the national community to the turbulent relations which render the problem of change acute in the international society',⁴ the resort to industrial tribunals provided a helpful alternative to the

¹ Sir John Fischer Williams, *World Order*, London, 1939, p. 22; see also his letter to the Editor of *The Times*, June 29th, 1939.

² In C. A. Manning (Editor), *Peaceful Change. An International Problem*, London, 1937, p. 141.

³ Compare W. Friedmann, *The Contribution of English Equity to the Idea of an International Equity Tribunal*, London, 1935, and Gustav Radbruch, in *Justice and Equity in the International Sphere*, London, 1936, pp. 2 *et seq.*

⁴ E. H. Carr, *The Twenty Years' Crisis*, London, 1939, p. 269.

'natural' state in which these parties had ultimately resort to strike and lock-out, both being forms of social pressure tolerated by the State.

No dogmatic answer is possible regarding the question of the scope and functions of such an equity tribunal. An embryonic stage in the development towards such agencies of change may be detected already in past endeavours of the League, such as the Lytton Commission which, in making its recommendations, in fact applied principles of justice and equity. This Commission had not, however, the power to impose its recommendations as a final decision on the parties. A further stage would be that of permanent committees appointed either by the Council or the Assembly. If these League organs were authorized to accept the recommendations of such equity commissions, the reports of the commissions would thus receive the character of final decisions. A more radical solution would consist in the setting up of an International Equity Tribunal rendering independent and final decisions.¹

More serious than the question of the formal organization of the equity tribunal is the problem on what principles its awards should be based. It follows from the need for such a body that those who advocate it have to be content with rules more flexible and more abstract than those of international law. Nevertheless, those rules ought to be as definite as is compatible with the required quality of flexibility. This problem, difficult though it is to solve satisfactorily, is well known in the sphere of municipal law, e.g. in federal States where political disputes between member States or between a State and the federal government have to be decided on the basis of rather vague and general constitutional norms.²

It has been suggested from various quarters that the equity judges should decide *ex æquo et bono* or in accordance with principles of justice and equity.³ An extraordinary power to decide a case *ex æquo et bono*, if the parties to the dispute expressly agree thereto, is granted to the Permanent Court of International Justice by its Statute.⁴ Equally, the General Act for the Pacific Settlement of International Disputes of 1928 provides this remedy as an ultimate solution,⁵ and numerous

¹ Compare *l.c.*, pp. 63 *et seq.*, in note 1, p. 392, above, and the survey of the various possibilities in *The New Commonwealth Quarterly*, 1937 (Vol. II), pp. 436 *et seq.*

² See N. Bentwich and H. A. Smith, in *Justice and Equity in the International Sphere*, London, 1936, pp. 14 *et seq.* and 40 *et seq.*

³ Compare *The New Commonwealth Quarterly*, 1936-7 (Vol. II), pp. 111 *et seq.* and 442.

⁴ Article 38.

⁵ Article 28.

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bilateral arbitration agreements of the post-1919 period contain clauses similar to that to be found in the German-Swiss Arbitration Treaty of 1921: 'If the Parties agree, the Tribunal may, instead of basing its decision on legal principles, give an award in accordance with considerations of equity.'¹

According to Aristotle's definition, equity is 'a correction of law, where law is defective by reason of its universality. . . . When the law has spoken in general terms, and there arises a case of exception to the general rule, it is proper, in so far as the law-giver omits the case and generally speaking is wrong, to set right the omission by ruling it as the law-giver himself would rule, were he there present, and would have provided by law, had he foreseen the case would arise'.² Yet this conception would be too narrow for the purposes of an International Equity Tribunal. International law is not sufficiently developed to provide general standards for the change of a political *status quo* or for the constructive settlement of questions of migration or access to raw materials and markets. If issues of this kind were to be settled before such a tribunal, the judges would require more discretion and wish to interpret equity in the sense in which Grotius defines it as 'everything which is better done than left undone, even outside of the rules of justice properly so called'.³

It goes without saying that any equity jurisdiction of this sort presupposes not only the existence of absolute and objective principles of justice, but also a common consciousness of these values amongst the judges and nations on whose behalf they fulfil their functions. Yet the narrowness or breadth of vision in respect of ethical values is at least determined as much by collective valuations of the social environment as by the standing of the individual. Therefore such equity jurisdiction seems only feasible between nations which have a minimum of standards of behaviour and valuations in common.⁴

Even if those conditions were fulfilled, the personal element would be decisive. Therefore the problem of the judges assumes vital importance, and William Ladd wisely proposed to enlist for this task

¹ Article 5; compare also the Italo-Swiss Treaty of September 20th, 1924, Article 15, and the Belgo-Swedish Treaty of April 30th, 1926, which both served as models for other subsequent agreements, and Article 15, paragraph 4, of the League Covenant. A convenient collection of these clauses is contained in M. Habicht, *The Power of the International Judge to give a Decision 'ex aequo et bono'*, London, 1935.

² *Nicomachean Ethics*, Bk. V, Chap. 14.

³ *De Jure Belli ac Pacis*, Bk. III, Chap. XX, Sect. XLVII.

⁴ Compare for a more detailed examination of these questions the monograph (pp. 12 *et seq.*) quoted above in note 1, p. 392.

the services of 'the master-minds of the earth', 'the most celebrated civilians and jurisconsults.'¹ Professor Brierly suggests that the opinion of such personalities 'is worth intrinsically neither more nor less than that of any other equally fair-minded and intelligent person',² as such a decision is not, like an award, based on legal rules founded on objective standards. This view seems, on the one hand, to under-estimate the discretionary power which judges enjoy both in systems based on codifications and on case law, and, on the other, the amount of high qualifications both in knowledge and character required from judges of this type. It may be – though it seems doubtful – that any fair-minded and intelligent person might have presented a report to the League on the Manchukuo conflict, but it appears to have been the good fortune of the League that they had a personality like Lord Lytton at their disposal for this delicate and complicated task. For this reason, Sir John Fischer Williams rightly regards it as desirable that these equity judges 'should be men of the very highest practical authority and experience, such as Prime Ministers or ex-Prime Ministers, Presidents or ex-Presidents or present or past Foreign Ministers'.³ The very fact that such personalities have to risk a reputation – assuming that they have not done so before – serves as an additional guarantee for the independence and justice of their decisions.⁴

Problems of a different kind arise in connection with the complementary idea of an international police force. In fairness to the idea, it must be kept in mind that this force is envisaged by its advocates not as a panacea, but only as the finishing touch to a comprehensive system of collective security with the full armoury of economic and military sanctions. In view of the fact that the force is supposed to have superiority in number and weapons compared with any power against which it might have to be used,⁵ it has been argued that the very name 'police' is a misnomer.⁶ Yet it seems that this term brings out the one essential difference of the international police force which distinguishes it from the armed forces of any nation State,

¹ William Ladd, *An Essay on a Congress of Nations*, New York, 1916, pp. 37 and 153.

² *The Law of Nations*, Oxford, 1936, p. 225.

³ *I.c.*, p. 22, in note 1, p. 393, above.

⁴ Compare on this question also H. Lauterpacht, who wants to entrust the judges of the Permanent Court of International Justice with *ad hoc* equity jurisdiction (*The Function of Law in the International Community*, Oxford, 1933, p. 327).

⁵ Lord Davies, *I.c.*, p. 361, note 2, p. 392, above.

⁶ *Report of the Military Research Committee of the New Commonwealth Institute on Air Force for the Peace Front*, London, 1939, pp. 6–7.

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and that is the different function which it fulfils. Whatever may be the size of such a force, the fact that it exercises its function on behalf of the organized international community seems more essential than the likelihood that, in size and equipment, such a force may well be indistinguishable from an army, navy or air force in the traditional sense, and may not give the appearance of an English policeman controlling peacetime traffic in the City of London. It would surpass the purpose of this chapter to discuss the technical problems which the establishment of such a force would involve. The questions of recruitment, conditions of service, command, language, bases, area of protection, freedom of movement of the force over the territory of member States, armament and its supply have all been raised by opponents, and answered by those in favour of the idea.¹ Again, experience has shown that those who are indifferent or opposed to the idea hesitate to say so, and prefer to allege the technical impossibility of realizing schemes of that sort. The detailed answers provided by their opposite numbers have at least cleared the issue to the extent that they forced their antagonists either into the open or at least into indignant silence.

The technical difficulties obstructing the establishment of an international equity tribunal and of an international police force exist, but can be overcome with relative ease. The real problems lie deeper.

If a State appeared before the Equity Tribunal and demanded access to raw materials and markets or a change of political frontiers, the attitude of the opponent would certainly be influenced by the spirit in which this advance was made. Thus the fact that Germany might have put her case for the remilitarization of the Rhineland or for the absorption of *Sudetenland* before an equity tribunal, as was suggested at the time by advocates of this programme, would not have affected the reluctance of the powers concerned to agree to these requests. For what mattered was not so much the demand itself, but the risk that any concession of this sort would ultimately merely serve the purpose of further strengthening German might for new adventures in the game of power politics. It may be argued that the advocates of this programme would only agree to such an equity decision if, at the same time, an international police force were already established which would give the security to the other side which was so sadly lacking during the period of appeasement

¹ Compare the publications quoted above in notes 5 and 6, p. 396, and R. N. Lawson, *A Plan for the Organization of a European Air Service*, London, 1936.

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Let us, therefore, assume that even this condition was fulfilled. If the international police force had been composed of quotas contributed by the national forces of the League members at the time of the September crisis of 1938, the problem was still whether some of the governments concerned would have instructed their units to come to the assistance of Czechoslovakia had that country decided to fight rather than accept an ignominious settlement. Even if a permanent international general staff had been assembled at Geneva and ordered the levies to take up action stations, the sceptic would wonder whether governments which dishonoured other pledges would have fulfilled just this particular one. Yet it might be imagined that a force might have existed which was 'constituted as an independent organic whole, recruited by individual voluntary enlistment'.¹ Even in this case, a political body would have to issue the order to the force to go into action, and can it be assumed that unanimity could have been secured in the League Council for such a purpose? If it should be argued that a majority decision would have to be sufficient or that the force should act on standing orders 'which, in most cases, would not require endorsement by or reference to any deliberative assembly',² then much more is taken for granted than is openly admitted. For the body which decides whether a State uses its armed forces lawfully or not, and makes dependent on this decision the action of the international police, is in reality the sovereign power which decides for the States partaking in such a scheme the issue of peace and war. This is a decision which may be within the proper province of an international government, if the nation States divest themselves of this function. It does not, however, seem plausible to entrust military authorities, whether national or international, with a function which they are at best only incidentally fit to make.

It, therefore, seems that an Equity Tribunal which forms part of the organization of a confederation such as a reformed League may easily be abused, in order to further mere competitive interests of a revisionist State, and an international police force which is under the control of a political body, such as the League Council, may be condemned to passivity just when action on its part may be most called for.

If, however, the decision as to the use of the force should be really delegated to an international authority, able to take immediate action, then there is no point in entrusting a governmental function

¹ *L.c.*, p. 12, in note 6, p. 396, above.

² *ibid.*, p. 30.

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to an executive body.¹ The history of past confederations, particularly that of the Germanic Confederation, may serve as a lesson. The existence of tribunals competent to deal with political disputes and questions of change, and of confederate armies, does not solve the difficulties inherent in the conception and reality of a confederation. These organs in themselves cannot overcome the root of the difficulty, the continued existence of the national sovereignty of the members of the confederation and the absence of any tie of direct loyalty on the part of their citizens towards the confederation. The success or failure of such a reform programme depends on its chances of being coupled with the establishment of a minimum of supra-national government.² International anarchy is the cause of war and its antidote is international government.

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¹ It must not, however, be overlooked that only a few years ago proposals like those of Lord Davies were regarded as ultra-radical and utopian. Therefore, it is understandable that these suggestions were at the time limited to what he regarded as the bare minimum, and that he and other later and more sudden converts to the federal idea came out in favour of a more developed scheme for international government only when public opinion moved as rapidly, as it has within the last two years, towards more comprehensive solutions for international order. Compare Lord Davies, *A Federated Europe*, London, 1940.

² Compare Georges Scelle, 'Théorie du Gouvernement International', in *The New Commonwealth Quarterly*, 1935 (Vol. I), pp. 18 *et seq.*, and Sir Arthur Salter's Preface to Lowes Dickinson, *International Anarchy*, London, 1937. See also Sir Alfred Zimmern, *Nationality and Government*, London, 1918, p. 26.

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CHAPTER 30

THE FEDERAL PATTERN: THE ESSENCE OF FEDERATION AND SOCIAL FORCES BEHIND FEDERATION

AN essential condition of government, whether national or international is authority, and authority implies power to overrule dissent.¹ International government means the super-State or world State, but this term is not necessarily identical with the idea of international standardization, a uniform world association which turns out world citizens like Ford cars.² The centralized world State forms a pattern of international organization which we have so far been spared. Yet for the time being even a decentralized unitarian world State would far transcend that optimum of reform which may claim serious consideration.³ An alternative worth considering is provided by the federal State.

It would be surprising if federalism were an idea which had not suggested itself before to thinkers and Statesmen. Actually, mankind has in the past, throughout the centuries, been so unimaginative that it has again and again tried the same few patterns of government which were taken up and rejected and, after an interval, tried again, so far always with a minimum of permanent success. The conception of federation, as that of confederation, can be traced back as far as antiquity, when the Greek city States used this form of co-operation and domination over each other in certain periods of growth and decay of the inter-Hellenic State system.⁴ Nevertheless, to those who propagate the idea, the truth that there is nothing new under the sun may appear either as a revelation or as an untimely

¹ Compare H. A. Smith, 'International Law-making', in *Transactions of the Grotius Society*, London, 1931, p. 102. See also W. Wilson, *The State*, Boston, 1898, pp. 612 *et seq.*, C. J. Friedrich, *Constitutional Government and Politics*, New York, 1937, and R. H. S. Crossman, *Government and the Governed*, London, 1939.

² See L. S. Woolf, *International Government*, London, 1923, Clyde Eagleton, *International Government*, New York, 1932, and Harold Laski, *A Grammar of Politics*, London, 1934, p. 65.

³ Compare, above, Chap. 25, p. 338.

⁴ Eduard A. Freeman, *History of Federal Government in Greece and Italy*, London, 1893.

reminder. For it is bound to calm down the enthusiasm of the prophet, if he is told that his gospel has been preached before or even been applied. Typical of this mentality is Proudhon, the famous French socialist, who put forward the claim:¹ 'The theory of the federal system is quite new. I think I can even say that it has not yet been presented by anyone.' In commenting on this rather bold statement it suffices to say that *The Federalist*, the collection of eighty-five articles contributed by Alexander Hamilton, James Madison and John Jay to the New York journals from the autumn of 1787 to the spring of 1788, was not unknown to Proudhon, also, that John Stuart Mill's essay on *Representative Government*, which deals with the problem in a nutshell, was published two years before Proudhon's pamphlet. This may serve as a reminder how doubtful such claims to novelty were then and are to-day. The fact, however, that the conception of federalism is older than some of its sponsors imagine is not necessarily a disadvantage. Federalists may find consolation in Hume's remark in his essay on 'The Idea of a Perfect Commonwealth': 'It is not with forms of Government as with other artificial contrivances; where an old engine may be rejected if we can discover another more accurate and commodious, and where trials may safely be made, even though the success be doubtful. An established government has an infinite advantage by that very circumstance of its being established; the bulk of mankind being governed by authority, not reason, and never attributing authority to anything that has not the recommendation of antiquity.'²

It appears that the doctrine and practice of government swings between two extremes: authority and liberty. Both forms are equally at home in the domestic sphere (despotism, totalitarianism, authoritarianism, representative monarchy, republic) and on the international plane (the Roman Empire, imperialist conglomerations, confederations and federations of States). None of the forms of government found practicable so far could dispense wholly with either of these two elements of government. They differ only in emphasis. Thus, in a nutshell, the essence of federalism (*fœdus*: covenant, alliance) consists in a threefold attempt. First, to leave as much freedom to local or sectional groups as is compatible with the common interest of the community as a whole. Second, to find a satisfactory balance between authority and liberty. Third, to

¹ *Du Principe fédératif*, Paris, 1863.

² *Hume's Philosophical Works*, Edinburgh, 1826, Essay XVI, Vol. III, p. 561.

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centralize matters vital for the community as such and to decentralize activities best left to local or sectional interests.

Thus, federalism can best be explained as a twofold reaction: First, against particularism. If the existing areas are too narrow, a co-ordination of local or sectional interests by a central government may seem desirable for a variety of reasons (political, economic, emotional). Second, against centralism. If there is danger that the central government tries to universalize its functions without obvious need or in a way which endangers the liberty of the individual or vital interests of minorities, devices for the limitation of such overruling power seem to be called for. It is obvious that this ideal can be realized in a multitude of ways and by innumerable constitutional devices. Differences in the actual structure of such composite States may depend on factors such as the varying needs of different ages and communities; the varying insight into needs that, from a detached point of view, may equally exist in various communities; the varying degree of willingness on the part of those concerned to make the necessary sacrifices of sovereignty and vested interests required in a given case to achieve the optimum of efficient government. Thus a federation is essentially a compromise between the complete independence of several States and their consolidation into a single State. In the words of Freeman, 'a federal life harmonizes the two contending principles by reconciling a certain amount of union with a certain amount of independence'.¹ This conception strikes a balance between the centralized power of a unitarian State and the impotence of a confederation. As absolute power is always in danger of being abused, owing to the weakness of human nature, federal government provides against this possibility at the price of a certain amount of inefficiency and cumbrousness of procedure.² In contrast to a functional division of power, the federal State presents a regional balance of government and administration.³ It seems, then, that in this manner, if at all, the riddle can best be solved of how to equate nationalism, the strongest social force in the inter-State sphere, with the requirements of international government.⁴

In view of its attempt to harmonize authority and liberty, national

¹ *I.c.*, p. 13.

² See J. P. Clark, *The Rise of a New Federalism*, New York, 1938.

³ Compare Stanley Pargellis, 'The Theory of Balanced Government', in Conyers Read (Editor), *The Constitution Reconsidered*, New York, 1938, pp. 37 *et seq.*

⁴ See Laski, *l.c.*, pp. 226-7, and M. Channing-Pearce, 'Federalism and Nationalism', in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 51 *et seq.*

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sovereignty and international order, it may be contended that the federal State differs only in degree from a confederation.¹ Yet though there is no clear cut division between those social phenomena belonging to either category, the difference lies in reality, as a comparison between the American Confederation and Bismarck's German Empire shows even at first sight. As Hegel puts it, a difference in degree grown large enough becomes a difference in kind. This transition from diversity to unity is marked by the absence or reality of an effective central government. Keeping in mind that any definition is nothing more than an abstraction and its purpose merely one of clarification (i.e. to assist in sifting the unwieldy historical material) and in its easier digestion, the number of federal experiments made since the Middle Ages permit of describing a federal State as a union of States the government of which is based on the consent of the federal electors and the rights of which are specially protected by the federal constitution.

To review in detail the evolution and organization of federal States in the Old and New World would far surpass the purposes of this chapter.² It may, however, be relevant to sketch the major social forces and interests which brought about the integration of confederations or the disintegration of unitarian States into federations. To be aware of this social background may assist in the assessment of the chances of similar schemes for post-War reconstruction.

Reverence for the Constitution of the United States and the values which it embodies has prevented for more than a century a realistic analysis of the actual motive powers which brought it into existence and led to its further consolidation. When at the Philadelphia Convention of 1787 the confederation of the thirteen American States was transformed into a federation, the first of the three conditions which John Stuart Mill regards as indispensable to render a federation advisable was certainly fulfilled: 'that there should

¹ Compare George C. S. and Mabel Gibberd Benson, 'Unexplored Problems of Federalism', in *The New Commonwealth Quarterly*, Vol. V, 1939-40, p. 218, Clyde Eagleton, 'The League of Nations and Federal Union', *ibid.*, p. 120, Georges Scelle, 'Union versus League', *ibid.*, pp. 204 *et seq.*, and Friedrich, *l.c.*, p. 176.

² See George W. Keeton and G. Schwarzenberger, 'Federalism and World Order', in *Union. The Monthly Forum of the New Commonwealth Institute*, January-October, 1940; also Duncan and Elisabeth Wilson, *Federation and World Order*, London, 1940; Duncan Wilson, 'The History of Federalism', in M. Chaning-Pearce (Editor), *Federal Union. A Symposium*, London, 1940, pp. 39 *et seq.*, and M. Alice Matthews, *Federalism* (Select Bibliographies No. 8, published by the Carnegie Endowment for International Peace Library, Washington, 1938).

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be a sufficient amount of mutual sympathy among the populations'.¹ The prevalent Anglo-Saxon elements were united by common tradition, religion, language, race and, last, but certainly not least, their belief in self-government, representation, majority decision and the political and religious freedom of the individual. They were further welded together by their joint victory over the British and the permanent danger to their security from Canada, where the former mother-country had given shelter to the American loyalists, from Spain, established in Florida and Louisiana, and from the Indians. Thus Hamilton could appeal to instincts which are most conducive to unity, and can easily be roused, provided suitable enemies can be found: 'Facts have too long supported these arrogant pretensions of the Europeans. It belongs to us to vindicate the honour of the human race, and to teach that assuming brother, moderation. Union will enable us to do it. Disunion will add another victim to his triumphs. Let Americans disdain to be the instruments of European Greatness. Let the thirteen States, bound together in a strict and indissoluble Union, concur in erecting one Great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connection between the old and the new world.'² Equally strong, if not stronger, was the economic motive. Rising capitalism required larger markets, uniformity of legislation in matters affecting industry and trade, a stable currency and reasonable safety for the owners of national securities.³ Both these driving powers increased in impetus in the course of the nineteenth century when 'rail-roads began to be built and to multiply; when people from all parts of the Union began to go out and settle the West together . . . when a second war with England and a hot struggle with Mexico had tested the government and strengthened a sentiment of national patriotism.'⁴

Since the middle of the nineteenth century, similar forces can be seen at work on this side of the ocean. The federal constitution of Switzerland of 1848, the result of an unsuccessful attempt on the part of the seven Roman Catholic cantons to secede from the confederation, established the competence of the *Bund* in the spheres

¹ John Stuart Mill, *Considerations on Representative Government*, London, 1933, p. 389.

² *The Federalist*, Essay XI, London, 1937, pp. 53-4.

³ Compare Charles A. Beard, *An Economic Interpretation of the Constitution of the United States*, New York, 1914, Friedrich, *l.c.*, pp. 179 and 531-2, and Sydney Herbert, 'Sectional Conflicts and American Federalism', in *The New Commonwealth Quarterly*, 1940 (Vol. VI), pp. 83 *et seq.*

⁴ W. Wilson, *l.c.*, p. 466.

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of customs duties, post, standards of measures and weight, coinage and communications. A further stage in this gradual process of strengthening the integrating tendencies was reached under the influence of similar developments in Germany and Italy and of the experience gained with the cantonal contingents during the war of 1870-1 between Germany and France. Simultaneously, democratic and anti-clerical movements pressed for a revision of the constitution which was achieved in 1874.¹ Since then, by thirty-nine revisions of the Constitution, the powers of the federation have been further increased, particularly regarding the unification of civil and criminal law as well as in economic and social matters. The rise of Italian fascism and Nazism in Germany, both imbued with a strong urge towards expansion and with racial ideologies, claiming parts of the Swiss people as their own, gave a new meaning to these federal and cantonal institutions. The Swiss people associated itself still more strongly with them now than it had gradually done since the second half of the nineteenth century. The principles of democracy and decentralization became marks of counter-identification, and this perpetual threat, much increased since the downfall of France, strongly contributed to strengthen the spiritual basis of Swiss federalism.

Since the early decades of the nineteenth century, national and liberal circles throughout Germany, supported by the vested interests of expanding industry and trade, demanded equally strongly a transformation of the Germanic Confederation into a federation with or without the Dual Monarchy. *Friedrich List's* programme for the development of Germany as an economic and industrial unit,² the increasing support for the conception of the *Zollverein* (customs union),³ even amongst the centrifugal State governments, as well as the drafts for the German Constitution of 1848,⁴ and for a common commercial code, all supply evidence of this strong current towards union. Yet the power of the States and the diverging interests of their dynasties succeeded in keeping this movement in check, until

¹ Compare E. Gagliardi, *Geschichte der Schweiz von den Anfängen bis auf die Gegenwart*, Zürich, 1920, and E. Fueter, *Die Schweiz seit 1848*, Zürich and Leipzig, 1928.

² Compare Friedrich Lenz, *Friedrich List. Der Mann und das Werk*, Munich and Berlin, 1936.

³ Founded March 22nd, 1833, by Prussia between herself and the other States of the Germanic Confederation, excluding Austria-Hungary. Compare H. Triepel, *Die Hegemonie*, Stuttgart, 1938, pp. 287 *et seq.*

⁴ Paragraphs 24 to 64. See Gerhard Anschütz and Richard Thoma, *Handbuch des Deutschen Staatsrechts*, Tübingen, 1930, Vol. I, pp. 42 *et seq.*

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Prussia, in its quest for political and military hegemony over Germany, used the *Zollverein* as a means towards this end.¹ It required, however, the application of still more direct forms of power politics in order to achieve a full federation of Germany. Actually, German unity was achieved only in the course of three successful wars, and the baptism of blood and iron seemed to the German Chancellor the only guarantee firm enough to secure this object. Thus, again it appears that the keynote of the federal experiment has not been so much to unite a people *for* a common purpose, as *against* a hostile world. The alliance between modern industrialism and Prussianism becomes evident from the functions which were entrusted to Bismarck's federal empire: foreign policy, military and naval matters, communications (railways, waterways, post and telegraph), customs, commercial legislation, currency and regulation of the system of coinage, weights and measures, status of the citizens of the *Reich*, Press and right of association, and taxation for the requirements of the *Reich*.²

In the *Weimar* Republic, the tendency towards further integration and centralization found its legal expression in many places. The Prussian hegemony was overcome and the competences of the *Reich* considerably increased. But centrifugal forces became noticeable and disturbed the smooth working of this Constitution. Particularism raised its head. Whereas it was Prussian hegemony that impressed its stamp upon Bismarck's Constitution, now Bavarian particularism, strengthened by antipathies against coalitions between the left and centre in the *Reich*, and the dualism between Prussia and the *Reich*, presented formidable problems. Furthermore, the burdens imposed by the Versailles Treaty – not on Imperial Germany, but on the young Republic – the fatal policy of inflation and deflation and the lack of political initiative and courage on the part of the governing coalitions, provided the ground for the anti-democratic forces of the right and the boggy of a similar danger from the left. As this federation did not recognize, while there was time, that toleration of intolerance is not a principle, but political madness and senility, it succumbed to the onslaught of the National Socialist gangsterdom and its 'legal' revolution. It is remarkable how strongly the movement towards the unification of Germany in the nineteenth century was influenced by the needs of industrial capitalism, requiring both an expanding home market and strong protection abroad in

¹ Triepel, *l.c.*, p. 547.

² Compare Anschütz-Thoma, *l.c.*, pp. 69 *et seq.*

the scramble of imperialist interests. The Treaty of Versailles can, however, claim the merit of having been the strongest single factor to which was due the transformation of the federal Republic into Hitler's unitarian and totalitarian Empire. The situation which was created partly by, and to a considerable extent attributed to, Versailles, imbued the German middle class and the younger generation as a whole with a nationalist spirit, to which federalism appeared merely as a source of weakness, disunity and impotence. This emotional attitude found support in the circles bent on re-armament. They were convinced that only a strongly united country could endure a policy leading to the overthrow of the system of Versailles and be strong enough to face a major war. Thus the federal structure was replaced by another system of balances and counterbalances between the State, party and army, with the people as mere objects and onlookers.

The British Empire as a whole, as well as federal experiments within its orbit, merit special attention from our point of view. For a while it might have looked as if the growing independence of the dominions from the Mother-Country would herald only a repetition of the secessionist movement which the Holy Roman Empire witnessed in the cases of Switzerland and the Netherlands. Yet there are sufficiently strong forces in the common bonds which link Great Britain with the dominions to prevent this movement from degenerating into a disintegration of the Empire. Having learnt its lesson from the secession of the North American colonies, British genius and Statesmanship brought about the miracle of the transformation of an Empire into a Commonwealth of free nations, a process which is still continuing before our eyes.¹ In the classical formulation of the Balfour Report, Great Britain and the Dominions 'are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations'.² Within this Commonwealth, the result of a balance between an elastic adaptation of British mastership over the former colonies to changing conditions, secessionist tendencies and growing self-consciousness in the Dominions, Manchester liberalism, the control of the sea by the British Navy, and the traditional, spiritual,

¹ Compare H. V. Hodson, *The British Commonwealth and the Future*, London, 1939, and John Coatman, 'The British Commonwealth as a Model for World Order', in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 310 *et seq.*

² *Comd.* 2768, p. 14.

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political, military and economic tendencies in the Dominions towards maintenance of close ties with Great Britain, there existed ample scope for federal experiments. In the two most important attempts so far completed,¹ Canada and Australia, we see various already familiar forces at work to achieve this result.

When the British North America Act was passed in 1867, the United States of America still provided the enemy on whose existence the granting of strong powers to the federal authority appears to depend. The fear that the opening up of the West by the pioneers might lead to the occupation by the United States of the territories to the west of Canada was one of the anxieties of that period, but, quite apart from such concrete possibilities, 'the threatening attitude of the United States in the sixties seemed to call for a highly centralized Canadian system'.² Obviously, the contemporary experience of the American Civil War did not fail to impress the makers of the Constitution in favour of a strong federal power. Equally potent was the economic motive, the interest in the elimination of inter-State tariffs and in the building of an intercolonial railway,³ factors noticeable already decades before in the growth of American federation.

The function fulfilled by the United States in the case of Canada was displayed in that of Australia temporarily by France when that country established a convict settlement in the New Hebrides in 1864, and still more effectively by Germany, preceding and following her annexation of New Guinea.⁴ Again, the inconveniences connected with different tariff policies formed a major incentive to federation, yet at the same time the difficulties of solving this problem presented an obstacle of hardly less importance.⁵ The fact, however, that the States existed long before the establishment of the Australian Commonwealth and had also established their own railway systems before the federation, introduces different features into a picture, otherwise very much alike. Finally, here, as in the United States of

¹ Compare on the problem of Indian Federalism George W. Keeton, 'Federation and India', in Channing-Pearce, *l.c.*, pp. 187 *et seq.*, Sir Albion Banerji, 'Problems and Prospects of Indian Federalism', in *The New Commonwealth Quarterly*, Vol. VI, 1940, pp. 33 *et seq.*, Lionel Aird, 'The Background of the Indian Problem', in *Umon. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 244 *et seq.*, and Sir Firoz Khan Noon, 'India's Position in the War', *ibid.*, pp. 360 *et seq.*

² W. Menzies Whitelaw, 'American Influence on British Federal Systems', in Read, *l.c.*, p. 308.

³ Compare British North America Act, 1767, X, 145, and Whitelaw, *l.c.*, p. 299.

⁴ *ibid.*, Vol. VII, Part I, p. 358.

⁵ See D. Wilson, *l.c.*, in Channing-Pearce, p. 52, and Ivor Jennings, 'Federal Constitutions', *ibid.*, p. 62.

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America, the groups bent on the extension of social services with the active assistance of the Government favoured growing centralization and thus a continuation of the process of federal integration.¹

Technically, the Union of South Africa, as constituted by the Act of the Imperial Parliament of September 20th, 1909, does not fall within the compass of the federal pattern. The competence of the provinces not being specially protected by the Constitution of the Union and being subject to modification by a simple act of the Union legislature, this Dominion belongs into the category of a decentralized unitarian State. Yet the very fact that this Dominion went beyond the Canadian and Australian precedents invites examination. The questions of commerce, railways and natives had raised issues with which the individual communities in South Africa could no longer cope. The British Government neither wanted to be responsible for the native policy of the European settlers and industrialists, nor felt itself to be in a position to impress a more liberal outlook upon them. The National Convention of South Africa, when confronted with the problem of federation, feared that the establishment of separate States and the creation of a court on the model of the American Supreme Court might harass unduly the 'frontier' attitude towards the black population of South Africa. Thus union, as opposed to federation, seemed to hold out 'the strongest guarantees in favour of the politically powerful whites'.²

Different social forces were at work to realize (if the term is no misnomer in those cases) federalism or at least sham federalism in Central and South America and in the U.S.S.R. The nearest approach to real federalism has been made by Argentina, though even there the poverty and social backwardness of many of the provinces led to an increase in federal powers which reduces these provinces to annexes of Buenos Aires where wealth, influence and the intelligentsia are concentrated.³ In the other three cases –

¹ Compare Mr. Menzies' speech in the Australian House of Representatives, November 22nd, 1938, *The Times*, November 23rd, 1938, and A. H. Charteris, 'An Australian Comment on Streit's Union', in *The New Commonwealth Quarterly*, Vol. V, 1940, pp. 316–18.

² C. W. de Kiewiet, 'The Frontier and the Constitution in South Africa', in Read, *l.c.*, p. 338. See also Sir E. H. Walton, *The Inner History of the National Convention of South Africa*, London, 1912. See on the phenomenon of the Dual Monarchy, which is still further remote from true federation and which lasted in the case of Sweden and Norway from 1815 to 1910 and in that of Austria-Hungary from 1867 to 1918, W. Wilson, *l.c.*, pp. 333 *et seq.*, and George W. Keeton and G. Schwarzenberger, 'Federalism and World Order', in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 152 *et seq.*

³ See C. H. Haring, 'Federalism in Latin America', in Read, *l.c.*, pp. 342 *et seq.*, and Carleton Beal, 'Pan-Americanism: 1937 Style', in *The Political Quarterly*, London, 1937, pp. 601 and 605.

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Brazil,¹ Venezuela and Mexico² – however, the federal structure offers merely a thin disguise for the actual autocracy of their presidents and the oligarchic rule of the groups by which they are backed. It is easy to explain the failure of federalism in these countries: lack of experience in self-government, absence of the educational minimum standards of democracy, feudal dependence of the poor in the agricultural districts on the owner of the large estate, social predominance of the officer cast and army. The answer to the complementary question is less simple. Why did these States ever insist on introducing federalism? True, the lack of close relations between hardly developed provinces favours decentralization. More potent, however, seem to have been the overpowering example of the mighty and prosperous neighbour in the north, which invited imitation at least on paper, and the anxiety of progressive intellectuals who regarded a federal constitution as the ideal form of government and wanted to make sure that their country got it. Finally, it is probably not far from the mark to assume that the European experiences of some of the Balkan countries repeated themselves on the other side of the Atlantic.

Public opinion in the United States of America as well as in Great Britain and France felt conscience-stricken at times about loans and close political relations with autocracies. As soon, however, as these countries appeared in the cloak of democratic constitutions and phraseology, things looked entirely different. What happened behind the stage was regarded as a matter of domestic concern, not to be examined too closely. A certain amount of ruthlessness and cynicism being inseparably connected with the profession of dictators and autocrats, they were not slow in realizing the qualms of powerful sections in the democracies (or 'plutocracies' as they probably preferred to call them privately), and they were quite prepared to oblige – at least in outward appearance. And what can impress more than one article in a constitution which emphatically announces that 'Brazil is a Federal State, constituted by the indissoluble union of the States, the Federal District, and the Territories',³ or imposing legislative bodies, as long as the actual elections are not watched from too near?

Still more perplexing is the question why the U.S.S.R., a dictatorship ruled by a coalition between the State and Party bureaucracy

¹ Compare Percy Alvin Martin, 'Federalism in Brazil', in Read, *l.c.*, pp. 367 *et seq.*

² See J. Lloyd Mecham, 'The Origins of Federalism in Mexico', *ibid.*, pp. 349 *et seq.*

³ Article 3 of the Constitution of November 10th, 1937, reproduced in *International Conciliation*, New York, 1939, pp. 30 *et seq.*

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with the Red Army and O.G.P.U., had to select of all things a federal constitution, granting not only universal, equal, direct and secret ballot for elections to the Supreme Council of the Soviet Union, but even the right of secession from the Union to the federal republics.¹ As has been discussed in an earlier chapter, the Bolsheviks had not been slow in recognizing the dynamic force of the idea of national self-determination.² A federal constitution certainly offers particularly good chances for the realization of this object, as the Swiss experience has shown. To a certain extent, the Bolshevik leaders took this aspect seriously, as they were aware from the start that they had to avoid at all cost an alliance between the nationalist movements and counter-revolutionary groups. Therefore they granted a far-reaching autonomy, in the cultural sphere, to the various nationalities of which the U.S.S.R. is composed.³ Furthermore, the idea of the Soviets themselves is a federal conception, and if in practice the Soviets worked from above to below, it only required a 'realistic' mind to conclude that a federal State also could be 'run' by the reversion of the original conception. Finally, was it merely a coincidence that the missing link in the federal structure of the U.S.S.R., the Council of the Soviet Union, was inserted by the actual election of delegates at a time when the U.S.S.R. was an active member of the League of Nations, and the Franco-Russian Pact of Mutual Assistance was still in the realm of practical politics?⁴ It had been wisely foreseen by the authors of *The Federalist*⁵ 'that a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands'.

¹ Compare Article 134 of the Constitution of December 5th, 1936, and Article 17.

² See, above, Chap. 21.

³ Hans Kohn, *Nationalism in the Soviet Union*, translated by E. W. Dickes, London, 1933.

⁴ The election took place on December 12th, 1937, and the first session of the Supreme Council was held on January 12th, 1938. See on the earlier stages of this development Sidney Webb (Lord Passfield), 'Soviet Russia as a Federal State', in *The Political Quarterly*, London, 1933, pp. 182 *et seq.*

⁵ Essay No. XLVIII, *l.c.*, p. 256.

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CHAPTER 31

THE FEDERAL PATTERN: PROBLEMS OF FEDERATION

SURFACE issues regarding the functions of the federal organs, the division of competence between the federation and the member States, or the manner in which the component units participate in the amending power are of importance in so far as they reveal deeper tensions and antagonisms between the regional groups or between them and the federal authority. In themselves, these problems are merely questions of technique and expedience, though the occupation with them seems to be a game equally exciting to the student of comparative constitutional law as to the dilettante constitution-maker. Experience in the past has proved that a federal legislature, court and executive are indispensable or at least highly desirable, in order to maintain some kind of balance between the federal organs. Furthermore, the federal and manifold local interests must be harmonized somehow, and this object appears to be achieved best if ultimately the balance is held by the vote of the people.¹

The real problems confront us in cases where federation does *not* work or only works under obvious difficulties or is closely linked up with political realities as far remote from the federal ideal as Bismarck's German Empire or the U.S.S.R.

In the German Empire two features are remarkable. The empire was a federation of monarchies and principalities (including the aristocracies of the three *Hanse* towns), and Prussia occupied a hegemonal position in the federation. This special situation, which corresponded to Prussia's military, economic and numerical preponderance, created a vested interest on Prussia's part in the maintenance and further integration of the *Reich*. The legislation of the Empire lay in the hands of the Council of the Federation and the Imperial Diet. In the Council, consisting of the representatives of

¹ Compare Carl Joachim Friedrich, *Constitutional Government and Politics*, New York, 1937, pp. 195 *et seq.*, D. G. Karve, *Federations*, London, 1932, and C. F. Strong, *Modern Political Constitutions*, London, 1939.

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the member States, eighteen votes (Prussia seventeen, and Waldeck one) out of fifty-eight votes were at the disposal of the Emperor. In addition, for all practical purposes, a sufficient number of other votes was available to the *Presidium*, as the Emperor is called in the Constitution, by way of other influences over co-members (dynastic affinities, dislocation of garrisons and other factual opportunities which exist in such a relation of superiority). As any alteration of the Constitution was considered as rejected if there were fourteen votes in the Council against it, this meant that no alteration of the constitution or legislation in those other spheres could be achieved against the Emperor and Prussia. Furthermore, the King of Prussia was automatically the German Emperor. To him, and not to the Diet, the Chancellor was responsible. He decided on the question of peace and war and was the commander-in-chief of the German army. The spirit of this hegemony finds its eloquent expression in the Constitution: 'The regiments bear running numbers for the entire German Army. For their clothing, the ground colours and fashion of the Royal Prussian Army are to be the model.'¹

In the abstract, federation is possible between monarchies, republics, dictatorships and Soviet States. Federation, however, as conceived in the Anglo-Saxon and Swiss tradition, is based on the notions of equality of member States and the consent of the governed. Understood in this sense, federation is a community conception with which hegemony, hierarchy and dependence, typical power conceptions, are incompatible. Therefore, unions of republics have always offered less chances to hegemonal tendencies than unions between monarchies,² more susceptible not only to power politics, but also to notions of feudal hierarchy.³ Yet of no less importance is actual equality or at least the absence of a very marked inequality of strength among the member States, in order to avoid the degeneration of the federation into an hegemonical association. In the simile of Alberico Gentili, 'the maintenance of union among the atoms is dependent upon their equal distribution, and on the fact that one molecule is not surpassed in any respect by another'.⁴

Hierarchy, however, does not stop here. It is accentuated when

¹ Article 63, paragraph 2, of the Constitution of April 16th, 1871. The text is reproduced in A. P. Newton, *Federal and Unified Constitutions*, London, 1923, pp. 239 *et seq.* See also H. Triepel, *Die Hegemonie*, Stuttgart, 1938, pp. 541 *et seq.*

² Triepel, *l.c.*, p. 157.

³ Compare Robert C. Binkley, 'The Holy Roman Empire *versus* the United States', in Conyers Read, *The Constitution Reconsidered*, New York, 1938, pp. 271 *et seq.*

⁴ *De Jure Belli Libris Tres*, London, 1933, Vol. II, p. 65.

it is transformed into domination, as in the case of colonial powers.¹ This raises the question whether the membership of colonial powers in a federation is compatible with the federal conception. If these ideas were only formal principles of organization, no difficulty would exist in answering this question in the affirmative. It was left to a Nazi professor of international law to advocate, *expressis verbis*, such a plan for a white federation 'extending from the North Cape to the Cape of Good Hope . . . in order to organize and conduct the unavoidable war of defence against the world of the coloured races'.² True federation, however, in the sense described is unthinkable without self-government and representation of the individuals who compose the union in the government of the federation. Therefore, it is only natural and part of an organic development which may be hastened by the war and the need for counter-identification against an enemy representing power politics and subjugation in its crudest form, that the British Empire, concomitant with its own transformation into a Commonwealth of free nations, applies increasingly widely the principles of self-government and trusteeship in its formerly colonial dependencies.³ This conception of the rulers as the servants of the Empire, to use Mr. Eden's terminology, is irreconcilably opposed to Hitler's conception of 'subjection and repression'. 'Either the German doctrine of submission or our own doctrine of equality must prevail.'⁴

The hegemonical character of Bismarck's German Empire was not the only deviation from the Anglo-Swiss pattern of federalism. It suffered equally from the limitations imposed on democracy, the backbone of federalism as developed by these Western nations,⁵ a deficiency which is still more patently obvious in the case of the South and Central American federations and in that of the U.S.S.R.⁶

The inseparable connection between federation and democracy was stressed again and again by the authors of *The Federalist*: 'The

¹ See, above, Chaps. 6 and 22.

² Hermann Jährcs, *Völkerrecht und Völkerfriede in Europa*, Stuttgart, 1937, pp. 28 *et seq.*

³ Compare on the Indian problem the literature quoted above in Chap. 30, note 1, p. 409, and on a recent development in British colonial policy, the plan for colonial development and welfare, the Government's statement of February 21st, 1940, Cmd. 6,175, and the leader, 'The Black Man's Burden', in *The Times*, February 21st, 1940.

⁴ Address at the Constitutional Club, April 17th, 1940. See also the present writer's 'Federation and the Colonial Problem', in Channing-Pearce, *Federal Union. A Symposium*, London, 1940, pp. 195 *et seq.*

⁵ Compare George W. Keeton and G. Schwarzenberger, 'Federalism and World Order', in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 86-7.

⁶ See, above, Chap. 30, pp. 410, *et seq.*

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first question that offers itself is, whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution, or with that honourable determination which animates every votary of freedom, to rest all political experiments on the capacity of mankind for self-government.¹ They eloquently warn against the adoption of the principle of constitutional heterogeneity between members of the federation² and anticipate the arguments of those who in our days would consider a federation, if not with Hitler, then at least with Göring or Thyssen, by the question:³ 'Who can predict what effect a despotism, established in Massachusetts, would have upon the liberties of New Hampshire or Rhode Island, of Connecticut or New York?'

In accordance with these suggestions and warnings, the Constitution of the United States of America guarantees 'to every State in the Union a republican form of government',⁴ while other articles define more closely the democratic principles of the Constitution and the amendments confirm the religious and political freedom of the American citizen and the fundamentals of the rule of law, as evolved within the orbit of Western civilization.⁵

The Swiss Constitution is equally emphatic on these points: the guarantees of civil liberties and rights of the citizens⁶ and the emphasis on the republican structure of the member States, which leaves them only the choice between direct and representative democracy.⁷

The German Constitution of Weimar fully kept in line with this tradition: 'Each State must have a republican constitution. The representatives of the people must be elected by the universal, equal, direct and secret suffrage of all men and women of the German Federation, upon the principles of proportional representation. The State Government requires the confidence of the people's representatives.'⁸ While it was easier for the Weimar Republic to accept on paper the principles of a federation in the Western

¹ Essay No. XXXIX, *L.c.*, p. 190. See also pp. 4, 16, 22, 32, 151, 157, 178 and 239.

² Essay No. XLIII, p. 221.

³ Essay No. XXI, p. 99.

⁴ Article IV, Section IV.

⁵ See particularly Article I, Sections II and X, and the various amendments to the Constitution.

⁶ Articles 4, 43, 44, 49, 50, 55-8, 60 and 63.

⁷ Article 6.

⁸ Article 17, paragraph 1. See also the 'Fundamental Rights and Duties of the German Citizens', in Articles 109 *et seq.*

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sense than to make them a political reality,¹ the constitutional homogeneity required by the constitutions of the United States of America or Switzerland, and achieved within their realm, signifies a unity in more fundamental spheres. Government by consent and representation is possible only where there is a far-reaching consensus on fundamental values. Conceptions such as freedom of thought, right of self-expression, individual responsibility, equality of men, protection of the weak, toleration, justice, truth and mercy – they are the principles of life which are the essence and standards of Western civilization.²

Never yet has the West succeeded in living up to these values which are only the secularized standards of Christianity. Everything, however, that is positive, valuable and worth conserving in the Western way of life can be traced back to these ultimately transcendental values and spiritual forces. A community conceived and organized in this spirit may be called a commonwealth, and a commonwealth, to use Lionel Curtis' apt description,³ 'is simply the Sermon on the Mount translated into political terms'.

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¹ Compare, on the reasons for the breakdown of the German Republic, Keeton-Schwarzenberger, *l.c.*, p. 87.

² See Ralph Henry Gabriel, 'Constitutional Democracy', in Read, *l.c.*, pp. 247 *et seq.*

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CHAPTER 32

THE FEDERAL PATTERN: BLUE-PRINTS FOR FEDERATION

LIONEL CURTIS, in his still topical book *The Problem of the Commonwealth*, rightly maintains that the preparation of concrete schemes is 'the first condition of any union of separate communities which is to be effected by virtue of popular discussion, understanding, and assent, and not by force'.¹ Nevertheless, he complains, 'the public have been brought to regard the mere suggestion of a definite scheme as a symptom of political madness'.² While this statement was made in the midst of the first World War, the British Prime Minister expressed his doubt as to the wisdom, in the early stage of this war, of too detailed plans for the reconstruction of the post-war world in a debate on war aims which took place shortly before the first year of the second World War drew towards its close: 'I do not think it would be wise at this moment, while the battle rages and the war is still perhaps only in its earlier stage, to embark upon elaborate speculations about the future shape which should be given to Europe or the new securities which must be arranged to spare mankind the miseries of a third World War. . . . The right to guide the course of world history is the noblest prize of victory. We are still toiling up the hill, we have not yet reached the crest-line, we cannot survey the landscape or even imagine what its conditions will be when that longed-for morning comes.'³ In spite of this warning, a plethora of schemes was showered on a bewildered public. One may like or dislike blue-prints of this sort, admire their wisdom or despair of their dilettantism, these schemes are there and their authors may justly claim to receive at least a hearing. The problems with which the writers appear most concerned are the composition of the federation and the functions to be handed over

¹ London, 1916, p. 233.

² *ibid.*, p. 223.

³ House of Commons, August 20th, 1940, *Hansard*, 5th Series, Vol. 364, col. 117.

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to it by the member States, but their attitude towards specific problems, such as the colonial question or the competence of the proposed federation in the economic and social sphere or the inclusion (or mostly exclusion) of China, India or the U.S.S.R., is still more fascinating. For it throws illuminating light on the political likes and dislikes, sympathies and prejudices which the drafters strangely either take for granted or of which they fail to be conscious themselves.

Nearly all the schemes work on the assumption that not only Great Britain, but the British Commonwealth as a whole should be included amongst its members. Nevertheless, some of them show a marked preference for calling their schemes 'A Federation for Western Europe'¹ or 'A Federated Europe'.² As, quite apart from the British Dominions and colonial possessions, also the colonial territories of the Continental member States are to remain associated with these countries or even to be administered as mandates on behalf of the federation, it seems that a greater detachment regarding the relative and growing unimportance of Europe in the world might not be inadvisable in schemes which include territories in up to four continents. The loose way in which the concept of 'Europe' is being used becomes evident from the fact that Lord Davies' 'Federated Europe' includes Turkey, a State which is obviously in a key position at the gates between Europe and Asia, but which unfortunately is mainly situated on the Asiatic continent. The scheme, however, excludes the U.S.S.R.,³ in spite of the fact that the U.S.S.R. has vast possessions in Europe and emphatically maintained against Briand's scheme for a European Confederation that she regarded herself as a European power. Similarly, Dr. Jennings has evolved a conception of his own as to the geographical scope of Western Europe. While all the Scandinavian countries, Finland and Germany are included, Poland and Czechoslovakia, which seem to be situated at least further west than Finland, are to remain outside.⁴ There may be excellent reasons why from a scheme for the federation of Western Europe Spain, the most Western State of Europe in the geographical sense, should be excluded, or in a plan for a federated

¹ W. Ivor Jennings, *A Federation for Western Europe*, Cambridge, 1940.

² Lord Davies, *A Federated Europe*, London, 1940.

³ Lord Davies, *ibid.*, pp. 82-8. See also on this point A. Millward's review of the book in *The New Commonwealth*, *Journal of the N.C. Society*, 1940, p. 42.

⁴ Jennings, *loc. cit.*, pp. 23-4. See on this point, A. B. Keith, 'The Practicability of Working a Federation', in *The New Commonwealth Quarterly*, 1940 (Vol. VI), pp. 22-3.

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Europe Turkey should be included, but it might be preferable to choose other criteria than those of a mock geography, invented *ad hoc*.

If it should be wise to assume that Germany will return as a matter of course to democracy after this war, while the U.S.S.R. will remain addicted for ever to totalitarianism, it is not necessary to transform Germany into a Western European State or to emphasize the Asiatic features of the U.S.S.R. It is quite sufficient to state, as Streit honestly did, that federation of countries like the United States of America or the members of the British Commonwealth with other States is feasible, if at all, only with States organized fundamentally on identical patterns such as Belgium, Denmark, Finland, France, the Netherlands, Norway, Sweden and Switzerland.¹ It may be objected that not much is left for *Union Now*, if the emphasis should lie on the second half of the title. It is, however, only fair to remember that these suggestions were put forward at a time when the Continental democracies were not yet overrun by Hitler's armies or completely isolated from the West, as Switzerland and Sweden are at present. What is essential is that Streit does not disguise his views on minimum conditions of homogeneity between the members of his contemplated federation behind semi-geographical arguments. Amazingly outspoken regarding the U.S.S.R. is one of the would-be fathers of a European Federation who offers Germany's 'military aid in regaining Eastern and Southern Poland' from the U.S.S.R. as 'the most direct and concrete proof of her determination to make good in the field of reparations'.² As, according to this plan, the composite army of the federation would be supplied by Germany with the light artillery and the infantry,³ the stage for the third World War between this European Federation and the U.S.S.R. seems already set and the otherwise formidable problem of demobilization settled, at least in so far as Germany is concerned.

Behind the contradictions, discrepancies and uncertainties of these blue-prints there is a problem which demands more serious attention than the actual suggestions for the inclusion of a favourite state or the exclusion of the 'black' (or rather the 'red') man. This is the issue of regionalism *versus* homogeneity. The advocates of regionalism first imply that something like a region exists as a natural unit or, if it does not, that such a region could at least be created. As the

¹ Clarence Streit, *Union Now*, London, 1939.

² Otto Strasser, *Germany To-morrow*, London, 1940, p. 94.

³ *ibid.*, p. 104.

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interminable discussions on the question of 'natural' frontiers might have taught, modern States have not limited their frontiers according to this criterion, if they could possibly avoid doing so. In a system of power politics, continental frontiers are the result of the continuously changing balance of power between contiguous States, and they overlap any regions which may be conceived by the geographer, economist or historian.¹ It might be possible to divide Europe theoretically in the manner in which, not without a sense of humour, an American geographer approached this problem.² According to this draft, Europe should be divided into four regions: Atlantica, comprising Great Britain, Ireland, France, Switzerland and the Western parts of Germany; Nordland, comprising the north-eastern parts of Germany, Scandinavia, Poland and parts of the U.S.S.R.; Mediterranea, comprising Spain, Italy and parts of Central Europe and of the Balkans; and lastly Grassland, comprising the south-western parts of the U.S.S.R., the rest of the Balkans and parts of Turkey. In practice, so-called regions formed by the existing States within Europe, such as Scandinavia, the Baltic or the Balkans have only reproduced in miniature the problems of power politics with which the world as a whole has been faced, and the policy of Denmark exasperated the advocates of a Scandinavian Union as much as the policy of the Little Entente towards Hungary and *vice versa* caused despair to the believers in a Danubian federation, or the position of Rumania to those who either claimed her for the former or wanted her to play her proper part in the Balkan Union only.³ The explanation of this phenomenon is not far to seek. While in any contiguous zone interests exist which draw countries closely together, contrary tendencies of a centrifugal character are equally present and link very often much more closely countries belonging to so-called regions with others farther away in space. As Madariaga observed

¹ Compare for the attitude of the power politician towards this question Adolf Hitler, *Mein Kampf*, Munich, 1930, p. 740.

² Derwent Whittlesey, 'A Utopia for Europe', in *The New Republic*, New York, 1940, pp. 204 *et seq.*

³ Compare George W. Keeton and G. Schwarzenberger, *Making International Law Work*, London, 1939, pp. 20 *et seq.*, and the analysis of the replies to the Questionnaire of the New Commonwealth Institute on Regional Federalism, in *The New Commonwealth Quarterly*, 1940 (Vol. VI), pp. 57 *et seq.* The chances of a Pan-American union can be regarded as more promising, partly owing to the exceptionally powerful position of the United States of America on the American continent, partly owing to the amount of confidence which this State has acquired since the inauguration of the good neighbour policy. Compare the present writer's *The League of Nations and World Order*, London, 1936, pp. 161 *et seq.*, and 'An American Challenge to International Anarchy', in *Transactions of the Grotius Society*, London, 1938.

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on the Briand plan, there was much to be said for the exclusion from such a scheme of Spain 'whose main moral interests are in America and whose material interests are mostly Atlantic'. 'The fact is that seas are bases of union at least as important as, if not more so, than continents.'¹

This view was strongly reciprocated from South America on various occasions. The reply from the Government of Uruguay to the League of Nations, concerning the Draft Pact of Mutual Assistance, contains the significant passage: 'Uruguay, owing to the difficulty of communications, is further from the northern countries of South America than from all, or nearly all, the countries of Europe.'² The truth is, as is vividly obvious from the position of Switzerland, surrounded by a Nazi-infested continent, or from the living community between the members of the British Commonwealth and their increasingly close bonds with the United States of America that geographical contiguity is not necessarily identical with a stronger degree of cohesion than community of political and social outlook.³ As the evolution and vitality of the British Commonwealth in this World War indicate, it is not even correct to assume that it is more difficult to govern and defend such a federation, spread as it is over the five continents and seven seas of the globe. Provided that the naval and air forces of such a commonwealth are adequate, this position may even be an additional source of strength because of its limited vulnerability to air attacks and its nerve-wrecking ubiquity to any enemy.

Thus it appears that schemes for federation which keep in mind the need for political social and ideological homogeneity not only keep in line with past experience, but also with the lesson of our own time of the shrinkage of space and increasing irrelevance of geographical contiguity.⁴

If, however, it is realized that it is political homogeneity which counts, then any open or disguised colour bar is a consideration

¹ *The Times*, September 26th, 1929.

² Note of August 7th, 1924 (*The League of Nations, Official Journal*, 1924, pp. 1,176 *et seq.*). See for further statements along the same line the present writer's *The League of Nations and World Order*, *l.c.*, p. 161, note 2.

³ Compare Sir John Fischer Williams' reply to the Questionnaire of the New Commonwealth Institute, *l.c.*, p. 64, in note 3, p. 423, above.

⁴ See E. Jäckh, 'Welt-Zeit', in *The New Commonwealth Quarterly*, 1935-6 (Vol. I), pp. 8 *et seq.*, and for more limited proposals, such as an Anglo-French or Anglo-American Union, Keeton-Schwarzenberger, *Making International Law Work*, *l.c.*, pp. 211 *et seq.*, and 'Federalism and World Order', in *Union. The Monthly Forum of the New Commonwealth Institute*, 1940, pp. 314 *et seq.*

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alien from the conception of international federation. It is consistent with its object that a scheme for mere European federation, such as the plan promoted by the Swiss *Europa Union*, should not contemplate the inclusion of India and China. But on what grounds can a scheme such as that of Lord Davies, which declares British Dominions of European origin eligible for membership in the federation, exclude India,¹ if 'the attainment by India of free and equal partnership in the British Commonwealth' is 'the proclaimed and accepted goal of the Imperial Crown and of the British Parliament'?² Or by reference to what principles does Dr. Jennings suggest that neither India nor Burma 'could be brought into the Federation on the same basis as the European nations',³ but that India should be equated with Canada and Burma with New Zealand for purposes of representation?⁴ As Professor Keith exclaimed in despair, 'it is impossible to take this seriously'.⁵

Again, there is a difficult problem underlying this issue. But it cannot be solved by mere escapism. It may well be that the millions who follow Gandhi and Chiang Kai-Shek are 'politically inexperienced'⁶ and below 'Western standards of education',⁷ but, judging by results, do they compare so unfavourably with the millions of Germans who follow Hitler's path and whom at least Jennings and Lord Davies would willingly include in their proposed federations?

The real difficulty consists in the fact that India and China so vastly outnumber all the other potential members of the federation that, if Streit's constitution were adopted, these two countries could command a majority in all organs of the federation. While some Europeans might prefer to know the States of the world to be rather in the hands of Gandhi or Chiang Kai-Shek than in those of Hitler, Mussolini or Stalin, others might not be prepared to go to that length, and probably those Indian and Chinese Statesmen would be much too modest and too much concerned with their own problems to wish to carry the burdens of the whole globe on their shoulders. Therefore, it seems that the ingenuity of constitutional lawyers would be more usefully employed if they did not concentrate on the evasion of this question, but attempted to solve it in a realistic and constructive spirit. If the population basis should not be abandoned

¹ Lord Davies, *l.c.*, p. 92.

² Cmd. 6,235, 1940, containing the statement made by the Governor-General of India to the Indian Legislature on November 20th, 1940.

³ Jennings, *l.c.*, p. 43.

⁴ *ibid.*, p. 44.

⁶ Streit, *l.c.*, p. 249.

⁷ Jennings, *l.c.*, p. 43.

⁵ Keith, *l.c.*, p. 12.

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in favour of another principle which safeguards the equality of these Far-Eastern countries, then the solution might perhaps lie, as Professor Keeton suggests,¹ in a general limitation of the principle of population, once a certain upper limit should be reached. Whatever the concrete solution, where there is a will to solve the problem of international representation there are ways and means to do so.

The suggestions contained in the various blue-prints concerning the division of functions between the suggested federations and their member States demand no less close attention. Practically all schemes contain the proposal that foreign affairs, the armed forces and the finance necessary for those departments should be within the exclusive competence of the union.² Wide differences of opinion, however, divide the reformers on the question whether the federation should be endowed with competence in the economic and social spheres, and, if so, what the powers of the federal union should be.

Lord Davies proposes to leave these matters in the hands of the member States and to limit the functions of the federation to those outlined above.³ Streit, faithful to the pre-New Deal ideology woven around the constitution of the United States, expects an automatic solution of the present difficulties from the establishment of *one* inter-union market and the abolition of trade barriers between the member States, and he would grant to his Union exclusive competence to regulate commerce among the member States, in the territory of the union and with foreign States. Professor von Hayek even regards a federation on those lines 'as the consummation of the liberal economic programme',⁴ for it rules out, in his opinion, the possibility of planning on collectivist and particularly socialist patterns. The States being no longer in a position to interfere with these questions, the chances of the federation to succeed in such an effort seem to Professor von Hayek highly remote: 'It is, after all, only common sense that the central government in a federation composed of many different people will have to be restricted in scope, if it is to avoid meeting an increasing resistance on the part of the various groups which it includes.'⁵ Yet, as these powers would not

¹ George W. Keeton, 'Federation and India', in M. Channing-Pearce, *Federal Union. A Symposium*, London, 1940, p. 194.

² See Sir John Fischer Williams, *World Order. An Attempt at an Outline*, London, 1939, p. 11, and Sir William Beveridge, *Peace by Federation?*, London, 1940, p. 13.

³ Lord Davies, *loc. cit.*, pp. 97, 99 and 115.

⁴ F. A. von Hayek, 'Economic Conditions of Inter-State Federalism', in *The New Commonwealth Quarterly*, 1939-40 (Vol. V), p. 146.

⁵ *ibid.*, p. 141.

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be left to the member States, 'federation would appear to mean that neither government could have powers for socialist planning of economic life'.¹ Dr. Jennings' Draft Constitution is noncommittal, and alternative articles are suggested to meet the wishes of those who desire to retain these powers within the orbit of the member States and those who would like to see them transferred to the federation.² Others, like Barbara Wootton, favour a solution which would enable the federation, 'if it wishes, to carry its economic activities up to the Russian level'.³

For those who do not wish to make their choice between these opposing schools according to party preferences, it might be worth while considering the suggestions from a broader point of view. The federal experience of the United States over the issue of slavery indicates the difficulties which arise if two diametrically opposed social systems such as the then already relatively highly industrialized States of the North, based on free labour and competition, and a quasi-feudal system, founded on the use of slave labour, live side by side within one federation. If such heterogeneity is not to burst the federation and to reduce it to a mere confederation, then the example of the American Civil War seems to suggest that one system has to make way for the other. Therefore, much is to be said, on those grounds alone, for economic and social homogeneity within the federal union. This argument is supported by the consideration that concomitant with the gradual disappearance of the formerly clear-cut distinction between the functions of the State and the individual, economic and social questions tend increasingly to be transformed into political issues. As, however, has been shown in an earlier chapter, consensus on the major political decisions of modern life is fundamental for a federation.⁴ To take only one example: The freedom of the individual was primarily a political question at a time when expanding markets and populations as well as freedom of movement for capital and labour appeared to offer an opportunity to find work for anyone who was willing to work. To-day, the conception of political freedom has become meaningless

¹ F. A. von Hayek, 'Economic Conditions of Inter-State Federalism', in *The New Commonwealth Quarterly*, 1939-40, p. 142.

² Jennings, *l.c.*, pp. 180 *et seq.*

³ Barbara Wootton, 'Economic Problems of Federal Union', in *The New Commonwealth Quarterly*, 1939-40 (Vol. V), p. 154. See also Harold Laski's 'The War Aims of British Labour', in *The New Republic*, New York, 1939, p. 235, and H. N. Brailsford, 'Can Europe Federate?' *ibid.*, 1940, p. 367.

⁴ Compare Chap. 31, above.

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if it does not include the guarantees of minimum standards of social justice and security, matters which are beyond the individual and which can only be achieved by conscious and organized efforts of political groups.¹ This development is only too likely to be accentuated in the post-War period, when the ruins of Europe will have to be cleared up, towns and villages will have to be re-built and huge armies to be demobilized and re-incorporated into a social system which has to be switched over from war to peacetime production. If these problems are not to be left to themselves, which would only mean that unemployment and social unrest would follow, if they are to be solved in a constructive spirit, then solutions limited to re-organization within national borders are clearly not enough. Then the only alternative to the chaos of another unimaginative peace is a policy of reconstruction which is conscious of the inter-relationship between unemployment, national sovereignty and war, and which finds the answer to this challenge in social justice, democracy and international order.

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¹ See E. H. Carr, *The Twenty Years' Crisis*, London, 1940, pp. 287 *et seq.*, and the excellent leader on 'The Two Scourges', in *The Times*, December 5th, 1940.

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POWER POLITICS, international anarchy and war are inseparable. These scourges of humanity are man's work and destiny in a society which is his own creation and which may be transformed only by his own exertions.

Wherever power is unchecked and uncontrolled, it leads to destruction, and the more is this so, the more power is concentrated in one single hand. The secret of this phenomenon lies in human nature, for which nothing is more dangerous and tempting than unlimited power.

The device against the abuse of power which has been elaborated in centuries of trial and error is the control of the government by those governed, and the guarantees which democracy offers against this arch-evil were alone sufficient justification for its superiority over any other form of government, even if it could not make any other claim to self-justification.

Yet the union between democracy and nationalism has proved that even majorities can easily be infected by the poison of unlimited power, and be capable of the suppression of minorities and individuals in no way different from that practised by absolutist kings and totalitarian dictators. It is not democracy in its mechanical sense which can serve as the foundation of a community, whether it be on the national or international plane. Democracy, as developed in the Anglo-Saxon countries, grants far-reaching freedom to the individual and minorities, and this situation is rightly not merely conceived as a privilege to those who enjoy it, but primarily as an essential element in the working of democracy in this higher and spiritual sense.¹ Such a conception of democracy can, however, only exist where there is a far-reaching agreement on fundamental values—that is to say, in a community proper. Democracy understood in the community spirit, as opposed to the formal society

¹ Compare John Middleton Murry, *Democracy and War*, London, 1940, p. 6, and J. H. Oldham, 'Preliminaries to the Consideration of Peace Aims', in *The Christian News-Letter*, 1939, Supplement to No. 5.

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conception of technical majorities, is the concomitant and indispensable condition of a community in the international sphere. Here lies the deeper reason why ultimately an international order cannot be achieved as long as powerful dictatorships and totalitarian States exist. Their exclusiveness in the approach to the realization of a community and their society mentality towards other communities would condemn any joint effort to failure, whatever the assurances of their leaders might be. Power, aggrandizement and expansion are the life-blood of totalitarian States, and those realities are stronger than the word of a dictator who is the captive of his own creation and leader only as long as he can lead in accordance with the norms to which he himself is an ignoble victim.

It would, however, be superficial to assume that formal and political equality between the citizens of a democratic State is enough to bring about the community variety of democracy. So long as democracy has not found means to control its overmighty subjects in the economic and financial sphere, the representatives of our capitalist industrial and financial system, so long must social democracy remain an empty shadow. The *Weimar* Republic may serve as a warning example. There were many reasons why Hitler could ever come to power, and not the least of them is to be found in the Peace Treaty of Versailles. Without, however, the assistance so lavishly granted to him by German heavy industry and high finance, he would never have achieved his object of corrupting the views of the masses of Germans, who were impressed by the manifold means and devices of his election and propaganda campaigns. Furthermore, large sections of the Press and cinemas were at his disposal, and shortsighted employers used less visible, but nevertheless highly effective means of indirect pressure to induce their co-citizens socially dependent on them to 'co-ordinate' themselves in the desired direction. Certainly this aspect of Hitler's victory on the home front does not exonerate those democratic leaders who capitulated, instead of fighting for their vision of a social democracy, but it indicates a lesson against contentment with a merely formal democracy.

It must equally be realized that uncontrolled private enterprise does not endanger the maintenance of democracy only at home. The all overriding profit interest of private industry and finance makes them incapable of resisting the temptation of providing even the totalitarian enemy and the potential aggressor with urgently

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required money, materials and weapons, as has been amply proved by the support received by Hitler for his re-armament policy from abroad.¹ These society features of democracy mar the conception of Western democracy as much as the collectivism of the U.S.S.R. is impaired by that country's totalitarianism. Therefore, the limitation and control by the community of economic and financial power and the achievement of social justice and security for all its citizens appear no less essential in order to realize a democratic community than the protection of minorities and the individual. Shortcomings of this kind certainly exist in the Western democracies, but they may well be a blessing in disguise. Our time is tired of war and peace slogans. The first World War was fought under the banner to make the world safe for democracy and to end war, and these worthy objects were only too soon forgotten after victory had been achieved. In a period of deep disillusionment and all-round dethronement of idols such as our own time, nothing convinces more than the living example of reform and re-orientation. Therefore, if it is the object of Great Britain and her allies, by the victory over Hitler and his satellite, Mussolini, to clear the way for an international community, what could be more convincing proof of this intention than its own transformation into a true community and commonwealth? There are already growing signs in the social and colonial spheres that British Statesmen are not unmindful of this unique opportunity. The more far-reaching and spectacular, however, this process of change from an Empire into a Commonwealth can be made, the more impressive and lasting will be the result at home, on neutral countries, and last, but certainly not least, on the peoples held down by Nazi tyranny. While war is not the appropriate time to establish a community of plenty, an emergency of this kind provides ample opportunity for a community of sacrifice and a fellowship of service. If, however, this result is to be more than a temporary makeshift, it must be based on deeper and more lasting foundations than those of momentary and external necessity.

Our time has lost its belief in the necessarily convincing effect of argument and reason. The liberal myth of progress does not prevent man from retrograde action, leading towards a mechanized barbarianism infinitely worse than anything to be found in primitive society or the 'dark' ages. Man, who claims to dominate Nature,

¹ See D. Saurat, 'The Deeper Issues before the Next Peace Conference, in *The New Commonwealth Digest*, December, 1939, p. 2.

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has not learnt to control himself.¹ The self-interest of individual, class or group does not produce results superior to action based on passion or other irrational motives. If interest clashes with faith, it breaks down like a house of cards: 'One person with a belief is a social power equal to ninety-nine who have only interests.'²

Compared with these optimistic and shallow interpretations of human nature, the Christian view of man as 'a dangerous creature, whose inclination is always to recognize no limits',³ seems to be more in accordance with reality and the results of modern psychology: 'For men shall be lovers of their own selves, covetous, boasters, proud, blasphemers, disobedient to parents, unthankful, unholy, without natural affection, trucebreakers, false accusers, incontinent, fierce, despisers of those that are good, traitors, heady, highminded, lovers of pleasures more than lovers of god'.⁴

Hitler, with uncanny insight into the weakness and shortcomings of human nature, was not slow to draw his conclusions from this situation.⁵ His appeal to race and force is nothing but the call of the pack, the resurrection of the animal in man, barely kept in bounds by centuries of civilization.

The only alternative to this road of debasement, cynicism and nihilism is the return to the springs from which our civilization flows, as it has come down to us through the ages from Athens, Rome and Judea through the medium of Christianity.⁶ This decision is not made easier by the all too human shortcomings of the Churches. They have, to a great extent, become obedient servants of the State, even of the totalitarian brand of the Nazi and Fascist type. They have sided with vested economic interests, as in Spain and Mexico, and they have concentrated a good deal upon the mere preservation of their own institutional existence.⁷

This situation does not, however, alter the fact that Christianity

¹ See Reinhold Niebuhr, *Europe's Catastrophe and the Christian Faith*, London, 1940.

² John Stuart Mill, *Considerations on Representative Government*, London, 1933, p. 155.

³ Niebuhr, *l.c.*, p. 19.

⁴ 2 Tim. iii. 2-4.

⁵ Compare H. Rauschning, *Hitler Speaks*, London, 1939.

⁶ Professor H. A. Smith drew attention to this so long neglected aspect of international order in his article on 'The Real Weakness of the League', in *The Nineteenth Century and After*, 1936, pp. 15 *et seq.* See also his letter to the Editor of *The Times*, April 15th, 1939.

⁷ See J. Middleton Murry, *The Betrayal of Christ by the Churches*, London, 1940, and for signs of regeneration and re-orientation, *The Christian News-Letter*; the Bishop of Chichester, *Christianity and World Order*, Harmondsworth, 1940; the Pope's Five Peace Points of 1939, *ibid.*, pp. 97 *et seq.*, and their amplification in his reply to the address of the Sacred College reported in *The Times*, December 27th, 1940, and the letter to the Editor by the Archbishop of Canterbury and others in *The Times*, December 31st, 1940.

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is the only faith which the Western world has still in common, though it would be fatal not to observe the vital differences between a Christian creed based on the freedom of the individual soul and one founded on the idea of supernatural predestination.¹

Yet it seems more important that this common faith comprehends all the values which make a real community: justice, freedom, truth and love,² and that democracy and social justice, as conceived in Anglo-Saxon countries, again are only leaves 'taken from the book of Christianity'.³

Thus the issue is clear. As in the international sphere, so in the national sphere there is, in the long run, no halfway house between society and community. International order and the rule of law in inter-State relations presuppose national communities in the strict sense of the word. The more the Western States become conscious again of Christianity as the ultimate basis of their existence and apply its principles to the regulation of their internal and particularly their social relations, the more they revert to the fountains of Western civilization and the more they are enabled to be integrated into real communities. Their living example cannot be replaced or surpassed by any slogan or programme. Christian communities in which democracy and social justice have become a reality hold the key to victory and post-war reconstruction in their hands.

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